

Page 1

Metro Enterprises/John Scarfi - 7-15-19

NEW YORK STATE
TAX APPEALS

IN THE MATTER OF THE PETITION
OF
METRO ENTERPRISES CORP.

for redetermination of a deficiency/revision
of a determination or for Refund of Sales
and Use Tax under Article 28 & 29 of the
Tax Law for the period March 1 -
February 28, 2014

IN THE MATTER OF THE PETITION
OF
JOHN SCARFI.

for redetermination of a deficiency/revision
of a determination or for Refund of Sales
and Use Tax under Article 28 & 29 of the
Tax Law for the period March 1 -
February 28, 2014

DATE:

July 15, 2019

PRESIDING:

BARBARA RUSSO, A.L.J.

800.523.7887

Associated Reporters Int'l., Inc.

Page 2

1 Metro Enterprises/John Scarfi - 7-15-19

2 APPEARANCES:

3 FOR THE PETITIONER:

4 ACKERMAN, LLP
BY: ALVIN BOBROW
5 666 Fifth Avenue
New York, New York

6
FOR NYS TAX APPEALS:

7
OFFICE OF COUNSEL

8
BY: OSBORNE JACK
Agency Building One

9
Albany, New York 12223

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

800.523.7887

Associated Reporters Int'l., Inc.

Page 3

1	Metro Enterprises/John Scarfi - 7-15-19	
2	I N D E X O F P R O C E E D I N G S	
3	Opening statement by Mr. Jack	14
4	Opening statement by Mr. Bobrow	16
5	CHRISTINE SCALA: Sworn	
6	Direct Examination by Mr. Jack	19
7	Cross Examination by Mr. Bobrow	126
8	Redirect Examination by Mr. Jack	130
9	Recross Examination by Mr. Bobrow	143
10	JENNIFER KINSLEY; Sworn	
11	Direct Examination by Mr. Bobrow	54
12	Cross Examination by Mr. Jack	73
13	Redirect Examination by Mr. Bobrow	83
14	JOHN SCARFI: Sworn	
15	Direct Examination by Mr. Bobrow	87
16	Cross Examination by Mr. Jack	92
17	Redirect Examination by Mr. Bobrow	102
18	Recross Examination by Mr. Jack	105
19	Redirect Examination by Mr. Bobrow	124
20	Redirect Examination by Mr. Bobrow	194
21	ANTHONY CAPECI	
22	Direct Examination by Mr. Bobrow	150
23	Cross Examination by Mr. Jack	175
24	Redirect Examination by Mr. Bobrow	184
25	Recross Examination by Mr. Jack	186
26	Redirect Examination by Mr. Bobrow	192
27	Examination by the A.L.J.	193
28	Closing argument by Mr. Jack	203
29	Closing argument by Mr. Bobrow	218

800.523.7887

Associated Reporters Int'l., Inc.

Page 4

1	Metro Enterprises/John Scarfi - 7-15-19	
2	E X H I B I T I N D E X	
3	Marked as	
4	Description	
5	Division	
6	A	12
7	Petition	
8	B	12
9	Answer	
10	C	12
11	Notice of hearing memo	
12	D	13
13	Scarfi petition	
14	E	13
15	Answer	
16	F	13
17	Notice of hearing, Scarfi	
18	G	32
19	Audit case file	
20	H	106
21	Cancelled checks	
22	I	107
23	94 page bank statements	
24	J	110
25	Metro bank account statements, 180 pgs	
26	K	111
27	22 pages Metro detail accts	
28	L	112
29	Metro bank records	
30	M	112
31	Metro bank records	

800.523.7887

Associated Reporters Int'l., Inc.

Page 5

1	Metro Enterprises/John Scarfi - 7-15-19	
2	N	130
3	Audit files	
4	O	138
5	286 pages	
6	P	217
7	Notice to admit	
8	Q	217
9	Notice to admit	
10	Petitioner's	
11	One	71
12	Petitioner's motion for summary judgment	
13	Two	102
14	1-7-11 audit	
15	Three	102
16	7-30-04 audit	
17	Four	149
18	Document, no specific description	
19		
20		
21		
22		
23		
24		
25		

800.523.7887

Associated Reporters Int'l., Inc.

Page 6

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Before we get started,

3 I see that we have a number of people in the
4 audience. We have some seats set up outside and I'm
5 going to ask that any non-party witnesses, sit in the
6 hallway until you're called for testimony.

7 MR. CAPECI: Judge, what is the
8 definition of non-party? I was subpoenaed to come
9 here so I --.

10 A.L.J. RUSSO: Yes. If you're not a
11 petitioner in this case, then you are a non-party
12 witness. If you're not a petitioner or with the
13 State of New York, because the State of New York is a
14 party, then you're a non-party witness.

15 MR. JACK: Judge, it only pertains to
16 people who are going to be called as witnesses?

17 A.L.J. RUSSO: Yes.

18 MR. JACK: Okay.

19 A.L.J. RUSSO: Correct.

20 MR. BOBROW: May I clarify something?

21 A.L.J. RUSSO: Yes.

22 MR. BOBROW: Coming for P.C. who is
23 here is the owner of one of the related entities.
24 And he's going to be called. I -- I subpoenaed him,
25 he is one of my witnesses. So I assume he could stay

800.523.7887

Associated Reporters Int'l., Inc.

Page 7

1 Metro Enterprises/John Scarfi - 7-15-19

2 or should he wait outside?

3 A.L.J. RUSSO: No, he should -- he
4 should wait outside, if he's -- if he's not a party
5 to the proceeding today.

6 MR. BOBROW: Okay.

7 A.L.J. RUSSO: Are you named in this
8 -- this proceeding or is that a separate --?

9 MR. CAPECI: Metro is -- and I don't
10 know -- I don't know I'm --.

11 A.L.J. RUSSO: Well, Mr. Jack, do you
12 know, is -- is he part of your proceeding?

13 MR. JACK: No, Judge.

14 A.L.J. RUSSO: Okay, then that would
15 be a separate petition.

16 MR. CAPECI: Okay.

17 A.L.J. RUSSO: And for the record, the
18 remaining people in the room. I just want to say, we
19 have two of our new A.L.J.s observing today, in the
20 back. So you can note that. We have a Judge DiFiore
21 and Judge Behuniak. And if the rest of the
22 individuals here could just give the Court reporter
23 your name so that she has that for the record, sir.

24 MR. GEE: My name is Eric Gee, Office
25 of Counsel, last name is spelled G-E-E.

800.523.7887

Associated Reporters Int'l., Inc.

Page 8

1 Metro Enterprises/John Scarfi - 7-15-19

2 MS. LYONS: Elizabeth Lyons, Office of
3 Counsel.

4 MR. JACK: Osborne Jack, Office of
5 Counsel.

6 MR. BOBROW: Alvan Bobrow, attorney
7 for petitioners.

8 MR. SCARFI: John Scarfi.

9 MS. SCALA: Christine Scala (phonetic
10 spelling).

11 A.L.J. RUSSO: Okay.

12 MR. JACK: Judge, may I get Mr.
13 Grillo. He's not going to testify today so is it
14 okay if he stays then?

15 A.L.J. RUSSO: I'm sorry, could you
16 say that again?

17 MR. JACK: Mr. Grillo who left and
18 he's not testifying.

19 A.L.J. RUSSO: Oh, he's not
20 testifying.

21 MR. JACK: No.

22 A.L.J. RUSSO: Okay. If -- if you
23 would like him in the room.

24 MR. JACK: Okay.

25 A.L.J. RUSSO: That's fine, as long as

800.523.7887

Associated Reporters Int'l., Inc.

Page 9

1 Metro Enterprises/John Scarfi - 7-15-19

2 he's not testifying.

3 MR. JACK: Thank you.

4 A.L.J. RUSSO: Can you just let the
5 Court reporter know his name.

6 MR. JACK: Frank Grillo, G-R-I-L-L-O.

7 A.L.J. RUSSO: Okay. I call the
8 matter of the petitions of John Scarfi and Metro
9 Enterprises Corp. under D.T.A. numbers eight two
10 eight seven four five and eight two eight seven four
11 six. The petition is for re-determination of the
12 deficiency, revision of a determination or for refund
13 of sales and used tax under Articles 28 and 29 of the
14 Tax Law for the periods December 1st, 2008 through
15 February 28th, 2014 and March 1st, 2008 through
16 February 28th, 2014.

17 My name is Barbara Russo and I'm the
18 Administrative Law Judge assigned to hear and make a
19 determination in this matter. Before we begin, I'm
20 going to outline the procedures that we will follow.
21 First, I will ask Mr. Jack, who is representing the
22 Division of Taxation to introduce the jurisdictional
23 documents.

24 After that, each party will have the
25 opportunity to present witnesses and documents to

800.523.7887

Associated Reporters Int'l., Inc.

Page 10

1 Metro Enterprises/John Scarfi - 7-15-19
2 support your position. For this matter, the Division
3 will present their witnesses first, followed by the
4 Petitioner's witnesses.

5 Any witness who testifies will be
6 subject to cross-examination. At the conclusion of
7 testimony, each side may make open -- excuse me, each
8 side may make closing arguments and make, request
9 additional time to submit briefs. Please bear in
10 mind to the following points. The burden of proof is
11 generally on the petitioner. The only evidence upon
12 which I can base my decision must be presented to me
13 at the hearing today.

14 Any documents submitted previously
15 either during the audit or the conciliation
16 proceedings must be presented today or I will not be
17 able to consider them.

18 If you have any objections during the
19 proceedings, please state so and I will rule
20 accordingly. Also, any requests to go off the record
21 must be made to me and I will determine whether it is
22 appropriate. If there's any questions regarding the
23 procedures we are going to follow, those questions
24 should be presented to me as well. At this point in
25 time, are there any questions regarding the

800.523.7887

Associated Reporters Int'l., Inc.

Page 11

1 Metro Enterprises/John Scarfi - 7-15-19

2 procedures?

3 MR. BOBROW: Motions that have been
4 filed, are they considered part of the record or not?

5 A.L.J. RUSSO: The motion of summary
6 determination, are you referring to --

7 MR. BOBROW: No. Yes.

8 A.L.J. RUSSO: -- that -- that will be
9 considered a part of the record. In fact, when you
10 submit your documents you can present it as an
11 exhibit if you wish and we can -- we can mark it so
12 that that way it makes it easier to refer to.

13 Any other questions regarding the
14 procedures?

15 MR. JACK: No, Judge.

16 A.L.J. RUSSO: Okay. At this point,
17 Mr. Jack, if you could please begin with the
18 jurisdictional documents.

19 MR. JACK: Sure. The Division would
20 offer the petition filed by Metro Enterprises
21 Corporation and -- which includes copies of the
22 Notice of Determination issues of the business.

23 A.L.J. RUSSO: The petition for Metro
24 Enterprise Corp. stamped received by Division of Tax
25 Appeals June 8th, 2018 will be accepted as the

800.523.7887

Associated Reporters Int'l., Inc.

Page 12

1 Metro Enterprises/John Scarfi - 7-15-19

2 Division's Exhibit A.

3 MR. JACK: The Division next offers
4 their answer dated August 8th, 2018, filed by the
5 Division in response to the petition.

6 A.L.J. RUSSO: The Division's answer
7 and cover letter dated August 8th, 2018 for the
8 matter of Metro Enterprises is accepted as the
9 Division's Exhibit B.

10 MR. JACK: And the final
11 jurisdictional document from Metro Enterprises Corp.
12 is the Notice of Hearing for that matter.

13 A.L.J. RUSSO: Notice of Hearing in
14 the matter of Metro Enterprises Corp. dated June
15 10th, 2019 is accepted as the Division's Exhibit C.

16 MR. JACK: The Division would now
17 offer the jurisdictional documents for John Scarfi
18 starting with their petition filed by Mr. Scarfi.
19 And again, this includes the Notices of Determination
20 issued to Mr. Scarfi.

21 A.L.J. RUSSO: The petition in the
22 matter of John Scarfi and attached documents dated
23 June 8th, 2000 and -- excuse me, stamped received by
24 Division of Tax Appeals June 8th, 2018 is accepted as
25 the Division's Exhibit D.

800.523.7887

Associated Reporters Int'l., Inc.

Page 13

1 Metro Enterprises/John Scarfi - 7-15-19

2 MR. JACK: The Division next offers
3 the answer together with a cover letter dated August
4 8th, 2018 filed by the Division in response to the
5 petition.

6 A.L.J. RUSSO: Division's answer and
7 cover letter dated August 8th, 2018 for the matter of
8 John Scarfi is accepted as the Division's Exhibit E.

9 MR. JACK: And the final
10 jurisdictional document is the Notice of Hearing in
11 the matter of John Scarfi.

12 A.L.J. RUSSO: The Notice of Hearing
13 in the matter of John Scarfi dated June 10th, 2019 is
14 accepted as the Division's Exhibit F.

15 Mr. Jack, is that all of the --?

16 MR. JACK: That -- that completes the
17 jurisdictional documents, Judge.

18 A.L.J. RUSSO: Okay, thank you. If
19 you could please state the issue and your opening
20 argument.

21 OPENING STATEMENT

22 MR. JACK: The first issue is whether
23 or not the sale of -- first of all funny money used
24 to pay for entertainment or amusement in -- in the
25 strip club is subject to sales tax and I think that

800.523.7887

Associated Reporters Int'l., Inc.

Page 14

1 Metro Enterprises/John Scarfi - 7-15-19
2 -- that issue is well-settled and that the strip is,
3 in fact, taxable. But a related issue to that is
4 who, in this scenario, is responsible for the taxes
5 that are due on such sales. And whether or not the
6 Division properly assessed Metro Enterprises
7 Corporation and Mr. Scarfi as a responsible person
8 for Metro for the sale of script that was used in the
9 strip club for pay for entertainment of the pre-
10 admission charges. And the Division also assessed
11 tax against Metro Enterprises Corporation and Mr.
12 Scarfi for the additional tax due on the sale of
13 beverages and other taxable items in the strip club
14 that the Division contends were operated by Mr.
15 Scarfi, Metro and the strip clubs themselves.

16 And the question here is whether or
17 not the Division properly determine that Metro
18 Enterprises Corporation and Mr. Scarfi were
19 responsible persons for the additional taxes due from
20 those. And petition also raise an issue in -- in --
21 it's here in memorandum as -- as to whether or not
22 the consents that were executed during the audit
23 would extend the statute of limitations, whether
24 those consents were properly executed.

25 And again, the Division maintains that

800.523.7887

Associated Reporters Int'l., Inc.

Page 15

1 Metro Enterprises/John Scarfi - 7-15-19
2 this is an issue that has been raised many times
3 before and -- and is well-settled that consents
4 extend the statutory limitation and other agreements.
5 The unilateral consents by a taxpayer that gives the
6 Division additional time to determine if there is
7 additional tax due. And the Division maintains these
8 consents were actually properly executed either by
9 petitioners or petitioner representatives. And --
10 and then that issue is well-settled. And those are
11 the issues as the Division sees them, Judge.

12 A.L.J. RUSSO: Thank you, Mr. Jack.

13 Mr. Bobrow --

14 MR. BOBROW: Yes.

15 A.L.J. RUSSO: -- if you would like to
16 phrase the issues differently and your opening
17 statement as well, please.

18 OPENING STATEMENT

19 MR. BOBROW: Yes, I also wanted to ask
20 you another procedural question. May my witness use
21 a laptop to refer to documents?

22 A.L.J. RUSSO: He can to the extent
23 that it's documents that you're going to be giving me
24 copies of, if they're going into the record.
25 Certainly, I'm not going to be privy to any digital

800.523.7887

Associated Reporters Int'l., Inc.

Page 16

1 Metro Enterprises/John Scarfi - 7-15-19
2 information he's looking at. So if it's something
3 that you want to put in as evidence, you -- you will
4 need to submit a hard copy of it.

5 MR. BOBROW: Okay, thank you. Good
6 morning, everyone. In his opening remarks, Mr. Jack
7 said that this is a well-settled case. And it really
8 is not an expression that I could use or would like
9 to use, as this is a case of first impression. And
10 that's because the prior cases that dealt with the
11 sale of funny money, as it's described, had a
12 different set of facts from the facts that we're
13 going to present in this case.

14 And the key fact that's different, to
15 keep in mind, is that the entertainers in the prior
16 cases were independent contractors. And in our case
17 they were employees. Another thing that
18 differentiates our case from the prior cases is that
19 any of the receipts, I'll say, or -- or revenue which
20 is -- it really was when the card is used to purchase
21 the funny money, nothing runs through the profit and
22 loss or the income of Metro.

23 In some of the other cases, the
24 taxpayer reported the income or the receipts from the
25 sale as part of his income in his income tax -- in

800.523.7887

Associated Reporters Int'l., Inc.

Page 17

1 Metro Enterprises/John Scarfi - 7-15-19
2 his income books. The point we want to make here is
3 that Metro is neither an agent or co-vendor of
4 M.L.B., the related entity, that was audited by the
5 auditor here.

6 And finally, and I would almost say
7 most importantly, last April, there was a memorandum
8 and order by the petitioner from the Third
9 Department. And in that order from the Third
10 Department, the Court said that it is not
11 automatically true that the sale of the script is
12 subject to sales tax. We're going to put this into
13 evidence and I will have witnesses to address this.

14 The Third Department said where the
15 script is subject to sales tax or the sale of script
16 depends upon the parties involved, the parties being
17 the entity that distributes the script, the club, the
18 entertainers. And when that question was put to the
19 Third Department, they had the opportunity to come
20 out and say that funny money is subject to tax and
21 they didn't.

22 And the last point we want to make --
23 and again, I have witnesses who will address this.
24 This is not truly the first audit of Metro
25 Enterprises.

800.523.7887

Associated Reporters Int'l., Inc.

Page 18

1 Metro Enterprises/John Scarfi - 7-15-19

2 Metro Enterprises had a predecessor
3 that where this issue was raised and after raising
4 the issues with Office of Counsel and senior
5 management within the tax department, while under
6 audit, the predecessor of Metro received a no change
7 letter, which really meant to this businessman that
8 he should continue what he's doing. Nothing was
9 wrong. And this no change letter when even further,
10 and it basically said that Metro, the predecessor of
11 Metro did not -- was not even a vendor, did not have
12 to register, did not have to file returns.

13 So the petitioner here is very upset
14 to say the least, that he sees the agency advising
15 him that he's doing everything correctly in 2011.
16 And then now, the agency comes back and says, oh, we
17 think you owe ten million dollars. So that's why
18 this is a very serious case.

19 A.L.J. RUSSO: Thank you. Mr. Jack,
20 if you could call your first witness, please.

21 MR. JACK: Sure. I am -- the Division
22 would like to call Christine Scala as its witness.

23 A.L.J. RUSSO: Okay. Take the witness
24 stand.

25 MS. SCALA: Good morning.

800.523.7887

Associated Reporters Int'l., Inc.

Page 19

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Good morning. Can you
3 please raise your right hand. Do you swear or affirm
4 to tell the truth, the whole truth and nothing but
5 the truth?

6 MS. SCALA: I do.

7 WITNESS; CHRISTINE SCALA; Sworn

8 A.L.J. RUSSO: Thank you. You may
9 proceed, Mr. Jack.

10 DIRECT EXAMINATION

11 BY MR. JACK:

12 Q. Good morning, Ms. Scala.

13 A. Good morning.

14 Q. Will you be comfortable if I call
15 you Ms. Scala or Christine?

16 A. You can call me Christine.

17 Q. By whom are you currently
18 employed?

19 A. Sorry. New York State,
20 Department of Taxation and Finance.

21 Q. And what do you do for the
22 department?

23 A. I'm a sales tax auditor II, which
24 is a first line team leader, supervisor.

25 Q. And how long have you worked for

800.523.7887

Associated Reporters Int'l., Inc.

Page 20

1 Metro Enterprises/John Scarfi - 7-15-19

2 the department?

3 A. Twelve years, exactly.

4 Q. And what are your duties as a
5 first line audit supervisor?

6 A. I have auditors currently five
7 auditors that I oversee their -- their audits and
8 review their cases.

9 Q. And what's -- what's typically
10 involved in the review of a -- of a case that's done
11 by your auditors?

12 A. It -- it varies. But usually
13 it's overseeing the auditor, making decisions on
14 audit, looking for research and -- and any additional
15 information from management when necessary.

16 Q. So are you involved also in the
17 conduct of the audit, I mean, when the audit is -- is
18 being conducted?

19 A. For the most part, yes.

20 Q. And what's typically that
21 involvement?

22 A. It varies from case to case.
23 Some cases are -- are simpler than others. But it's
24 involved with audit methodology, research, Tax Law.

25 Q. In Metro Enterprises Corporation,

800.523.7887

Associated Reporters Int'l., Inc.

Page 21

1 Metro Enterprises/John Scarfi - 7-15-19

2 I mean, how did you become involved in that -- in
3 that matter?

4 A. I went with the -- originally, I
5 went with the auditor on the first appointment.

6 Q. And so who was the auditor?

7 A. Jennifer Genovese.

8 Q. And where is Ms. Genovese?

9 A. She is no longer with the
10 department.

11 Q. So do you recall how Ms. Genovese
12 came about to conduct an audit of Metro Enterprises
13 Corporation?

14 A. Yes. She was auditing two other
15 entities, two other strip clubs. And through
16 meetings with the then power of attorney, we were
17 told that there was another entity that process the
18 -- the transactions for the sale of script. And we
19 were given the information, the name, the I.D. number
20 and we decided to get the best overall picture of all
21 the transactions that we needed to call that entity
22 down for audit as well.

23 Q. So you -- you said a minute ago
24 that Ms. Genovese was conducting an audit -- audit of
25 the strip club. And when the Division is conducting

800.523.7887

Associated Reporters Int'l., Inc.

Page 22

1 Metro Enterprises/John Scarfi - 7-15-19

2 an audit of the strip club, what is it looking for?

3 A. The Department's position is
4 everything is -- is taxable. So we want to see all
5 the transactions and review that books and record.

6 Q. When you say that everything is
7 taxable, what -- what exactly is taxable it is --

8 A. You -- I'm sorry.

9 Q. -- in a -- in a strip club?

10 A. Usually, there are few different
11 revenue streams. There are door admissions, there's
12 the sale of like --.

13 Q. So let -- let's talk about the
14 door admission.

15 A. Okay.

16 Q. Are the door admissions taxable?

17 A. Yes.

18 Q. Okay. What else is there?

19 A. The sale of liquor.

20 Q. Is the sale of liquor taxable?

21 A. Yes.

22 Q. And what -- what other revenues
23 streams do you look at?

24 A. There are sales of private rooms
25 for private dances.

800.523.7887

Associated Reporters Int'l., Inc.

Page 23

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. And are those taxable?

3 A. Yes.

4 Q. Again, what else?

5 A. And then there's could be coat
6 check, some other little things but there's also the
7 sale of script which is admission to -- well, it's to
8 pay for a stripper in -- in one of these private
9 rooms.

10 Q. When you say pay for a stripper,
11 you mean, are those fees that are due to the stripper
12 for their performances that they give to patrons?

13 A. Yes. So there's a -- a sale of
14 -- of script and the -- the script is what is used to
15 pay the stripper or dancer.

16 Q. And are -- are those taxable?

17 A. Yes.

18 Q. Those sales?

19 A. Yes.

20 Q. Okay. So Ms. Genovese was
21 conducting an audit of -- of a strip club. And then,
22 did she request books and records from that -- from
23 that strip club?

24 A. Yes.

25 Q. And did the taxpayer provide

800.523.7887

Associated Reporters Int'l., Inc.

Page 24

1 Metro Enterprises/John Scarfi - 7-15-19

2 books and records?

3 A. The books and records, are we
4 talking about this from the strip clubs?

5 A. From the strip club, yes.

6 A. We -- no.

7 Q. No books and records --

8 A. Initially, no.

9 Q. -- whatsoever?

10 A. No.

11 Q. So how exactly did she come
12 across any information then with regard to Metro
13 Enterprises Corporation?

14 A. It was through conversations with
15 the power of attorney when we were told how the whole
16 operations of the club work and he informed us of the
17 other entity.

18 Q. And is that -- is that a typical
19 thing that you would do when you conduct an audit?
20 Have conversations with the taxpayers'
21 representative?

22 A. Absolutely.

23 Q. By the way, who was that
24 representative on that particular strip club audit?

25 A. Initially, it was Anthony Capeci.

800.523.7887

Associated Reporters Int'l., Inc.

Page 25

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. And -- so Mr. Capeci informed the
3 Division that -- so -- well, Ms. Genovese is looking
4 at the strip club and she's trying to determine what
5 when she got that information from Mr. Capeci, what
6 was she trying to determine?

7 A. Initially, we want to get all the
8 books and records and determine his total --

9 Q. And specific to the information
10 that she got that led her to Metro Enterprises Corp.,
11 what was she looking at at that particular time?

12 A. I don't know if I understand what
13 you mean.

14 Q. I'm sorry?

15 A. I don't know if I understand what
16 you would mean.

17 Q. Okay. You -- you testified
18 earlier that there were certain transactions in this
19 report that's subject to sales tax. The coat check,
20 the bar sales, the room rentals and -- and also the
21 sale of strip. Which one of those areas, I mean, was
22 being questioned when Ms. Genovese's received
23 information that there was a separate entity
24 involved?

25 A. Okay. So when we were -- well,

800.523.7887

Associated Reporters Int'l., Inc.

Page 26

1 Metro Enterprises/John Scarfi - 7-15-19

2 how we were told was that Metro, when -- when we were
3 informed of Metro, that Metro processed the credit
4 card charges which was the sale of the script. So
5 that was Metro's portion of -- of the transactions.

6 Q. So is it that Ms. Genovese
7 inquired about the dance fees paid by the dancers?

8 A. Yes.

9 Q. And then was she looking for
10 information about the dance fees or -- or where the
11 receipts for the dance fees were?

12 A. Yes. We -- we wanted to know
13 everything that transpired in -- in the -- in the
14 club itself.

15 Q. And so Ms. Genovese gets this
16 information that there was a separate entity involved
17 and what does she then do?

18 A. We ended up calling it down for
19 audit in order to have the full picture of -- of
20 everything that -- that was going on within the --
21 the club itself.

22 Q. Would it have been possible for
23 the -- the Division to conduct a complete audit of
24 this strip club without looking at the books and
25 records from Metro?

800.523.7887

Associated Reporters Int'l., Inc.

Page 27

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. I don't think so because it --
3 it's not, it would be an incomplete audit. It would
4 -- would not be the whole picture.

5 Q. Do you know what's typically
6 offered for -- for sale in a strip club? I mean,
7 you've -- you've mentioned certain things like the
8 beverage and -- and the coat check and whatever else.
9 But the people go to the strip club just to check
10 your coat in?

11 A. No. I -- I -- it's too expensive
12 to do that.

13 Q. Why do people go to strip clubs?

14 A. I -- I would guess, the primary
15 reason is to see very scantily-dressed women.

16 Q. And -- and so was the Metro's --
17 in your estimation, from looking at the conduct in
18 the audit, was Metro's role in the strip club an
19 integral role?

20 A. Yes. I -- I -- the two entities
21 really -- the way it's structured cannot really exist
22 without the other.

23 Q. And why exactly do you think that
24 way?

25 A. Because if -- if someone's going

800.523.7887

Associated Reporters Int'l., Inc.

Page 28

1 Metro Enterprises/John Scarfi - 7-15-19

2 to go to a strip club to see a strippers, there need
3 to be strippers there. And if -- if one entity has
4 the strippers and one doesn't, they -- they need --
5 and the strippers need the club. So they -- they
6 needed each other.

7 Q. Okay. So -- so in -- I mean, the
8 Division is now conducting an audit of Metro
9 Enterprises Corporation. And did Ms. Genovese's
10 request books and records from the Metro Enterprises?

11 A. Yes.

12 Q. And did she receive books and
13 records from Metro?

14 A. Not initially, but eventually.

15 Q. And what books and records, if
16 you remember, did the -- the Division receive from --
17 from Metro?

18 A. Approximately two years into the
19 audit, we received daybooks, handwritten daybooks,
20 contracts signed between the entertainers and -- and
21 Metro.

22 Q. And were you able to use those
23 contracts and the daybooks to determine how much, if
24 any, tax Metro owed?

25 A. Well, the nature of Metro's

800.523.7887

Associated Reporters Int'l., Inc.

Page 29

1 Metro Enterprises/John Scarfi - 7-15-19
2 business is credit card transactions. So because the
3 books and records that were provided were
4 handwritten, which we considered them to be
5 inadequate, we picked up the credit card charges from
6 the bank statements.

7 Q. So you weren't able to use the
8 records you described to determine whether or not
9 there was a tax liability?

10 A. No.

11 Q. What then did you do? How did
12 you determine -- so I mean, you testified. I mean,
13 you testified a couple of minutes ago that you
14 determined that the books and the records were
15 inadequate. How then did you determine how much, if
16 any, tax Metro owed?

17 A. We took the bank statements,
18 Metro has a bank account for each one of the clubs
19 that it works with or it's -- it's -- it provides the
20 transactions for. And we took all the credit card
21 charges and held them as -- as taxable sales.

22 Q. All right. So -- so two things.
23 First, I mean, can you go back and -- and describe
24 the structure of Metro and -- and these strip clubs,
25 I mean, how did they function?

800.523.7887

Associated Reporters Int'l., Inc.

Page 30

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. From what we were told, we did
3 get a tour of the clubs involved. And from what we
4 were told, the -- once you walk into the club,
5 everything is within the -- each individual club.
6 And when a patron wants a private dance in a private
7 room with an entertainer, he is -- and he's paying
8 with a credit card. He is charged a fee for the room
9 and a fee for the dance. And we were told that the
10 fee for the dance runs through Metro's credit card
11 and Metro's bank and the fee for the room went
12 through the club's credit card and the club's bank.
13 But needed the two of them together.

14 Q. Were you able to determine how
15 many clubs Metro had that arrangement with in New
16 York?

17 A. We were --- we were told four
18 clubs.

19 Q. So did Metro provide the bank
20 accounts to you that you -- you described earlier?

21 A. The majority of the bank accounts
22 we subpoenaed and got the bank statements on our own.

23 Q. And how did you then use the --
24 the bank statements to determine the tax liability?

25 A. We transcribed the bank

800.523.7887

Associated Reporters Int'l., Inc.

Page 31

1 Metro Enterprises/John Scarfi - 7-15-19

2 statements for the audit period and picked up the
3 total credit card receipts and held a tax of it.

4 Q. And those receipts you taxed on
5 -- on what basis again?

6 A. That was the sale of script,
7 dance fees that's -- that we hold taxable as part --
8 prior court cases.

9 MR. JACK: At this time, Judge, the
10 Division would like to offer a two hundred and
11 eighty-one page document for the auditor for
12 identification marked as Division's Exhibit --

13 A.L.J. RUSSO: G.

14 MR. JACK: -- G.

15 A.L.J. RUSSO: We'll mark for
16 identification purposes Division's Exhibit G. You
17 did give a copy to Mr. Bobrow?

18 MR. JACK: Yes.

19 A.L.J. RUSSO: Do you want me to show
20 G to the witness?

21 MR. JACK: Yes, please, Judge.

22 BY MR. JACK: (Cont'g.)

23 Q. Christine, could you tell us what
24 this document is, please?

25 A. I believe it's the entire audit

800.523.7887

Associated Reporters Int'l., Inc.

Page 32

1 Metro Enterprises/John Scarfi - 7-15-19

2 case file.

3 Q. And does it include the audit
4 report that would have been prepared by the Division
5 in conjunction with the audit?

6 A. Yes.

7 Q. And if you just -- roughly,
8 what's included in here other than -- other than the
9 audit report?

10 A. The audit report, the A.U. three
11 forty-six, D.O. two twenty, correspondence, some
12 internal closing documents, work papers, federal
13 returns.

14 Q. Okay. And is this a document
15 that was prepared by the Division in -- during the
16 conduct of the audit?

17 A. Yes.

18 Q. And was prepared by the Division
19 in its normal course of business?

20 A. Yes.

21 MR. JACK: If there are no objections,
22 Judge, the Division moves that Exhibit G be admitted
23 into evidence.

24 MR. BOBROW: No objection.

25 A.L.J. RUSSO: I accept the Division's

800.523.7887

Associated Reporters Int'l., Inc.

Page 33

1 Metro Enterprises/John Scarfi - 7-15-19

2 Exhibit G. Do you want her to keep it to refer to?

3 MR. JACK: Yes, if you can, I'm going
4 to present an exact copy of that document to the
5 witness if you wanted to get Exhibit G so you can
6 follow on, Judge.

7 A.L.J. RUSSO: Thank you.

8 BY MR. JACK: (Cont'g.)

9 Q. Christine, so you testified
10 earlier that you obtained bank information from Metro
11 and based on that information you determined that
12 Metro owes additional tax on the sale of script --

13 A. Yes.

14 Q. -- used to pay admission charges
15 in the strip club.

16 And could you tell -- tell us and walk
17 us through the -- the audit file, if necessary. How
18 much tax was determined due from Metro for the sale
19 of script?

20 A. Okay. So I have to look at some
21 of these, I'm sorry, just give me a second.

22 Q. Well -- well, let's ask the
23 question a different way.

24 A. Okay.

25 Q. How much -- did Division

800.523.7887

Associated Reporters Int'l., Inc.

Page 34

1 Metro Enterprises/John Scarfi - 7-15-19

2 determine that Metro had sales that were subject to
3 sales tax?

4 A. Yes.

5 Q. And how much sales from the sale
6 of script did the Division determine was subject to
7 tax?

8 A. Well, I'm sorry, that's taken me
9 a minute, it's --

10 Q. Take your time.

11 A. -- because of the different --
12 because of the -- the way that they -- she did it and
13 the two revenue streams, I just want -- hopefully
14 answer your question. I'm sorry.

15 Q. All right. If you -- if you look
16 at the first page in the -- in Exhibit G, if you look
17 towards the bottom of the page where it says, before
18 and after audit figures.

19 A. I'm sorry, I thought -- okay.
20 I'm sorry. So the -- the total tax was --

21 Q. No, I -- I have to ask you --

22 A. Oh, I'm sorry.

23 Q. -- a question first. If you look
24 there towards the bottom of the page, there's a
25 number that says gross sales and it seems to say,

800.523.7887

Associated Reporters Int'l., Inc.

Page 35

1 Metro Enterprises/John Scarfi - 7-15-19

2 reported after audit. What did those numbers mean?

3 A. The after audit is forty-four
4 million four hundred thirty-eight thousand five
5 hundred and sixty-six dollars and five cents.

6 Q. And before audit is what?

7 A. Zero.

8 Q. Did Metro file any sales tax
9 returns?

10 A. No.

11 Q. Did Metro pay any sales tax
12 during the period at issue?

13 A. No.

14 Q. So does that mean that the
15 Division looked at certain books and records and
16 determined that Metro had sales of forty-four million
17 dollars that were subject to sales tax?

18 A. Yes.

19 Q. Was that forty-four million
20 dollars from the sale of script?

21 A. No.

22 Q. Okay. How much of those sales
23 were from the sale of script?

24 A. So that's what I'm trying to find
25 for you. I want to say, I have it individually I

800.523.7887

Associated Reporters Int'l., Inc.

Page 36

1 Metro Enterprises/John Scarfi - 7-15-19

2 don't have it totaled up. Can I give you an

3 approximate or that's not good?

4 Q. Just answer the question the best
5 you can.

6 A. I'm sorry. It was about thirty-
7 six million dollars.

8 Q. And you testified that the --
9 these -- this Exhibit G contains the work papers that
10 the Division used?

11 A. Yes.

12 Q. And can you locate the work --
13 take your time. Locate the work papers and -- and
14 see if you can tell me how much of the sales were
15 from the sale of script? All right. The pages are
16 all numbered. Can you turn to page sixty-nine,
17 please?

18 A. Okay.

19 Q. And on page sixty-nine there is
20 -- why don't you tell us what it is? What is --?

21 A. Okay.

22 Q. What is -- what is this on page
23 sixty-nine?

24 A. This -- okay, this is what I was
25 looking for. Okay. So this has the four strip clubs

800.523.7887

Associated Reporters Int'l., Inc.

Page 37

1 Metro Enterprises/John Scarfi - 7-15-19
2 that Metro worked with or -- or had their sold script
3 to in New York. And this is the breakdown of all
4 four of them for the audit period. So this would be
5 the bank deposits for all four, totaled up and the
6 combined deposits of all four of them were forty-four
7 million three eighty-six. Okay. Wait a minute, I'm
8 sorry. That's the total including the clubs. These
9 are a little confusing to me, I'm sorry. The total
10 for just the Metro transactions for the sale of
11 script was thirty-eight million two eighty-one seven
12 forty-six.

13 Q. Okay. And how did the Division
14 come to that thirty-eight million dollar number?

15 A. That was strictly taking the
16 credit card deposits from those four bank accounts.

17 Q. So -- so at the bottom of page
18 sixty-nine there is a number that says total -- total
19 Metro deposits four clubs, thirty-eight million
20 dollars, that same number across from it is number
21 that says total additional taxable sales clubs. And
22 that's a six point one million dollar number. Where
23 does that six point one million dollar number come
24 from?

25 A. So in addition to picking up the

800.523.7887

Associated Reporters Int'l., Inc.

Page 38

1 Metro Enterprises/John Scarfi - 7-15-19
2 sale of script on the bank accounts from Metro, we
3 also were auditing the individual I.D. for the clubs
4 and there was additional taxable sales that were
5 found due from a review of register tapes for a
6 quarter and we -- well, there was a register tapes
7 for a quarter for two of the clubs and the other two
8 were point of sale documents. But this was for
9 beverages, room rentals, admission over and above
10 what the clubs had reported to us is tax for sales.

11 Q. So on the top of the page, the
12 same page sixty-nine across the top in parenthesis,
13 the Division has M.L.B., 44th, Lace, Stiletto. I
14 mean, and that's repeated on the -- on the right side
15 of the page also. What are those -- what are -- what
16 are those names mean? Are those the clubs with which
17 -- in which Metro sold the script?

18 A. Yes, those are the clubs and that
19 is their -- their corp. name. It was very, as you
20 can see, confusing audit with a lot of entities and a
21 lot of transactions. So we did our best to separate
22 them as -- in order to hopefully make some sense out
23 of it.

24 Q. So if you -- if you take M.L.B.
25 then can you tell us how much additional sales the

800.523.7887

Associated Reporters Int'l., Inc.

Page 39

1 Metro Enterprises/John Scarfi - 7-15-19

2 Division -- that M.L.B. did not report?

3 A. For -- okay, so when you say
4 M.L.B., you're talking about the -- the corporation
5 for M.L.B.?

6 Q. Yes.

7 A. Four million two hundred two thou
8 -- two thousand eighty-five dollars.

9 Q. And how did you determine those
10 sales for M.L.B. or those additional sales that were
11 subject to tax?

12 A. So for M.L.B. and 44th, it was
13 the same --

14 Q. No, just --

15 A. Just -- okay, I'm sorry.

16 Q. -- just M.L.B. --

17 A. So for M.L.B. --

18 Q. -- how did you determine the tax,
19 I mean, the sales, sorry, the additional sales that
20 was subject to tax from M.L.B.

21 A. We reviewed a quarter of register
22 tapes and we added them up. We got -- compared that
23 to the reporting for that quarter and developed an
24 error rate and extrapolated that. The reason why we
25 did that was the records were inadequate. We did

800.523.7887

Associated Reporters Int'l., Inc.

Page 40

1 Metro Enterprises/John Scarfi - 7-15-19
2 attempt to go in and -- and do a point of sale
3 extraction to get the original source documents and
4 they were no longer on the computer. So we were
5 unable to -- to use the original source document.

6 Q. Did you look at the computer?

7 A. Yes.

8 Q. So you -- you actually went in to
9 M.L.B. Enterprises Corporation, looked at the
10 computer, the records weren't there and then you used
11 -- did you say two months or two --

12 A. A quarter.

13 Q. A quarter. And so did you -- did
14 the Division conduct an audit of M.L.B. Enterprises?

15 A. Yes.

16 Q. And we requested the books -- did
17 the Division request books and records from M.L.B.
18 Enterprises?

19 A. Yes.

20 Q. And the records we received were
21 they adequate to determine if M.L.B. Enterprises
22 reported the proper amount of tax due?

23 A. No.

24 Q. So did you make a determination
25 then that the records were inadequate?

800.523.7887

Associated Reporters Int'l., Inc.

Page 41

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Yes.

3 Q. And -- and you say that we used
4 that quarter to determine whether or not there was
5 any additional sales subject to tax?

6 A. Yes.

7 Q. Where did you get the information
8 for that quarter?

9 A. The power of attorney --
10 actually, not the power of attorney, the owner gave
11 us envelopes that he keeps with all his day's
12 receipts in an envelope. And within that envelope
13 there were many receipts and we did our best to go
14 through them and take the sales. But within those
15 receipts were receipts for M.L.B. and receipts for
16 Metro and a lot of the receipts -- the individual
17 credit card receipts would all be stapled together.
18 So within this one envelope that we received on the
19 audit of M.L.B., we were finding receipts for Metro.
20 It was pretty much at that time we determined that
21 it's one entity, but that's where we got the receipts
22 and we transcribed them, compared it to his reporting
23 and developed an error rate and extrapolated that.

24 Q. And is -- I mean, that error rate
25 that you just referred to, is that summarized

800.523.7887

Associated Reporters Int'l., Inc.

Page 42

1 Metro Enterprises/John Scarfi - 7-15-19

2 anywhere in the work papers? Is that --?

3 A. I'm not sure if it's in the work
4 papers here, but it would be in the work papers for
5 the -- for the other entity itself, the M.L.B.

6 Q. And if you look at page seventy
7 then, can you -- can you tell us what -- what's
8 there?

9 A. Yes, that would be it. So that
10 shows the taxable sales reported that error rate on
11 that of one point four seven eight zero would have
12 been what, which would be on page seventy-one. So
13 that would be how we determined it.

14 Q. What is on page seventy-one?

15 A. Seventy-one shows the gross
16 receipts for the quarter ending -- test quarter
17 ending 11/30/13, how those register tapes we saw,
18 which was a million fifty-one thousand seven hundred
19 and forty-three dollars. He -- we took out sales tax
20 remitted as the taxpayer did not charge tax. So
21 there was no tax separately stated on any of these
22 receipts. And we got audited taxable sales
23 subtracted out what was recorded and that's how the
24 error rate was determined.

25 Q. So does page seventy-one show the

800.523.7887

Associated Reporters Int'l., Inc.

Page 43

1 Metro Enterprises/John Scarfi - 7-15-19

2 error rate, you are saying that the error rate was
3 one point four seven eight o?

4 A. Yes.

5 Q. What did you then do with that
6 error rate?

7 A. So being it was computed on
8 reported taxable sales, we applied it to reported
9 taxable sales to get our audited taxable sales. So
10 it would have increased taxable sales by that
11 percentage and that was the additional taxable sales
12 of four point two million dollars.

13 Q. And let's go back to page sixty-
14 nine then, and the next entity that you have listed
15 there is Metro -- 44th. Did you do a similar
16 computation to determine the additional tax due from
17 44th Enterprises?

18 A. Yes.

19 Q. And is that computation included
20 in the -- in the work papers that you have before
21 you?

22 A. Yes, it is.

23 Q. And by the way, for 44th
24 Enterprises, I mean, what did you look at to
25 determine the error rate?

800.523.7887

Associated Reporters Int'l., Inc.

Page 44

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. It would be the same thing. So a
3 -- receipts that were provided in envelopes that we
4 received from the taxpayer of quarter, quarter ending
5 11/30/13 and we reviewed those.

6 Q. And did the Division conduct an
7 audit of 44th Enterprises Corporation?

8 A. Yes, we did.

9 Q. Did the Division request books
10 and records from 44th Enterprises?

11 A. Yes, we did.

12 Q. Did the Division make a determine
13 -- determination with regard to the adequacy of those
14 records?

15 A. Yes.

16 Q. And were the records adequate or
17 inadequate?

18 A. Not adequate.

19 Q. And on page seventy-four, is that
20 the error rate that you computed for 44th Enterprises
21 Corporation?

22 A. Yes.

23 Q. And did you do the same thing
24 that you had done with Metro Enterprises Corporation?
25 Did you apply that error rate to the taxable sales

800.523.7887

Associated Reporters Int'l., Inc.

Page 45

1 Metro Enterprises/John Scarfi - 7-15-19

2 reported by 44th?

3 A. Yes, we did.

4 Q. Can you please tell us how you
5 determine the additional sales from --?

6 A. Yes. That was a little
7 different. We did attempt to get the point of sale
8 data from 44th and M.L.B., but that was not
9 available. But we were able to get point of sale
10 data for Lace and Stiletto. So we used that, so on
11 page seventy-six it shows the additional taxable
12 sales that we found when looking at the point of sale
13 records. I don't know where it is on -- the other
14 one is probably right in front of it.

15 Q. I'm sorry, I didn't --

16 A. Yeah.

17 Q. -- get the last thing you said.

18 A. I was looking for -- for
19 Stiletto, but on page seventy-six shows the
20 additional taxable sales we determined from the
21 review of the point of sale records.

22 Q. And did you conduct an audit of
23 Lace Entertainment Incorporated?

24 A. Yes.

25 Q. And did the -- did the Division

800.523.7887

Associated Reporters Int'l., Inc.

Page 46

1 Metro Enterprises/John Scarfi - 7-15-19

2 request books and records for Lace?

3 A. Yes.

4 Q. And were the records adequate to
5 determine if Lace had paid the proper amount of sales
6 tax?

7 A. I -- I have to say I -- I am not
8 a hundred percent sure if the records for Lace were
9 adequate.

10 Q. So this method that you used here
11 on page seventy-six, what were you looking at?

12 A. We looked at the point of sale.
13 So the transactions that occurred in the club were
14 recorded on the taxpayers' point of sale computer.
15 So that's what we looked at.

16 Q. And so if you look at page
17 seventy-six then where it says, Q.E., what does that
18 mean?

19 A. P.O.S.?

20 Q. No, Q.E. Towards the middle of
21 the page there is a column that says, Q.E. there.

22 A. I'm sorry, quarter ending.

23 Q. So where it says Q.E. and you
24 have November 13, what does that mean?

25 A. That was that -- that was

800.523.7887

Associated Reporters Int'l., Inc.

Page 47

1 Metro Enterprises/John Scarfi - 7-15-19

2 September, October, November of 2013.

3 Q. And there's a number there one
4 hundred and twenty dollars and eight hundred and
5 twenty-seven dollars and seventy-four cents. What is
6 that number?

7 A. That shows the amount of sales
8 that was over and above what was reported and that
9 should be coming from -- from page seventy-seven
10 right behind it.

11 Q. So if you go to page seventy-
12 seven then, can you show us where that one hundred
13 and twenty thousand dollars came from?

14 A. Right. It's -- it's in that last
15 column. So I would have to go back to the page. So
16 I think it -- it -- I'm sorry, I think it really
17 comes from the next page, which was seventy-eight
18 where there was three -- the three months in each of
19 those quarters that were -- the dollar amounts that
20 were transcribed are here. And the -- that came to
21 the -- the totals that you see there.

22 Q. Can you tell us what the totals
23 are, please?

24 A. I'm trying. So it looks like the
25 total for those three months are seven fifty-six nine

800.523.7887

Associated Reporters Int'l., Inc.

Page 48

1 Metro Enterprises/John Scarfi - 7-15-19
2 ninety-six ten. And I apologize because these are
3 not my work papers. So I'm reading them, trying to
4 figure them out as I go. Okay. So that would be
5 gross receipts. So that's why you don't see that
6 number. And there were other information that was
7 subtracted out and so we finally come to that five
8 ninety-four five forty-eight as the whole sales
9 reported. There was an error rate though, because
10 the gross sales per the point of sale was six eighty-
11 seven. So the gross sales per the point of sale were
12 higher than what was reported and that's -- we put
13 the error rate on the reporting and that you'll see
14 on page seventy-seven.

15 Q. So is it that the taxpayer
16 reported five hundred and ninety-four thousand five
17 hundred and forty-eight dollars in gross sales, but
18 the Division found that it should have been six
19 hundred and eighty-seven thousand dollars for that
20 quarter?

21 A. Yes.

22 Q. And you said that tax for
23 Stiletto was determined similar to the tax for Lace?

24 A. Yes.

25 Q. And can you tell us then what's

800.523.7887

Associated Reporters Int'l., Inc.

Page 49

1 Metro Enterprises/John Scarfi - 7-15-19

2 on page eighty, eighty-one -- pages eighty, eighty-
3 one and eighty-two?

4 A. So it's -- looking at it now,
5 it's -- it's the same methodology and I'm starting to
6 remember a little bit now that we only received point
7 of sale information for a certain period. We did not
8 receive it for the entire period, which is why we
9 developed that error rate.

10 Q. So back to the original question
11 that I asked, were the records -- the books and
12 records for Lace Entertainment adequate?

13 A. Now, after looking at that, I'm
14 going to say, no.

15 Q. Well -- anyway. So the method
16 for -- for Lace and Stiletto was -- was similar --

17 A. Correct.

18 Q. -- and from your recollection
19 though, you think that the books and records were
20 inadequate that were provided to the Division?

21 A. Correct. Yes.

22 Q. So the methods you just described
23 with regard to M.L.B., 44th, Lace and Stiletto. Is
24 that what Division used to determine the six million
25 dollars in additional sales, roughly?

800.523.7887

Associated Reporters Int'l., Inc.

Page 50

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Yes.

3 Q. And did those two numbers
4 together the thirty eight million dollar that you
5 spoke about earlier, and the six million dollars, did
6 those two numbers constitute the forty-four million
7 dollars in -- in gross sales that you testified to
8 earlier?

9 A. Yes, it did.

10 Q. And the Division then issued
11 notices of determination to Metro Enterprises
12 Corporation?

13 A. Yes.

14 Q. And did these numbers form the
15 basis for the notices?

16 A. Yes, it did.

17 Q. And is it also the same for
18 notices issued to Metro -- to John Scarfi, sorry, as
19 a responsible person for Metro?

20 A. Yes.

21 MR. JACK: I have no further questions
22 for this witness:

23 A.L.J. RUSSO: Thank you. Mr. Bobrow,
24 cross examination?

25 MR. BOBROW: Your Honor, can we have a

800.523.7887

Associated Reporters Int'l., Inc.

Page 51

1 Metro Enterprises/John Scarfi - 7-15-19

2 five-minute break please?

3 A.L.J. RUSSO: Yes, we'll --

4 MR. BOBROW: Thank you.

5 A.L.J. RUSSO: -- we'll go off the

6 record for five minutes for --.

7 The reporter: We're off.

8 (Off record, 11:31 to 11:39)

9 A.L.J. RUSSO: Back on the record. We
10 took a five-minute recess and we're now back and let
11 me just remind you, you are still under oath.

12 Cross examination at this time.

13 MR. BOBROW: Your Honor, I would like
14 to reserve my cross examination because Ms. Scala did
15 a very good and detailed explanation of how the
16 liability was computed. But I think it's more
17 important in this case that we understand the
18 taxability and the respondent's position. And to do
19 that, I'd like to put on my first witness who will go
20 into why the position is that we have a little
21 clarify everything for Your Honor, and for the
22 department as well. So I think I'd like to reserve
23 on Ms. Scala and put on my first witness.

24 A.L.J. RUSSO: Ms. Scala, were you
25 going to be staying for -- for the rest of the day?

800.523.7887

Associated Reporters Int'l., Inc.

Page 52

1 Metro Enterprises/John Scarfi - 7-15-19

2 THE WITNESS: Yes.

3 A.L.J. RUSSO: Okay. That's fine.

4 Then you're excused for now. Mr. Bobrow, if you
5 could please call your first witness.

6 MR. BOBROW: Thank you. I'd like to
7 call Jennifer Kinsley.

8 A.L.J. RUSSO: Please raise your right
9 hand. Do you swear or affirm to tell the truth, the
10 whole truth and nothing but the truth?

11 MS. KINSLEY: Yes, I do.

12 WITNESS; JENNIFER KINSLEY; Sworn

13 A.L.J. RUSSO: Okay. You may proceed,
14 please.

15 MR. BOBROW: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BOBROW:

18 Q. Could you please tell the Hearing
19 Officers and the Court today, what -- who is your
20 employer, where you live and what you do?

21 A. Yes, my name is Jennifer Kinsley,
22 K-I-N-S-L-E-Y. I am an attorney licensed to practice
23 law in the State of Ohio, the State of Florida, the
24 Federal District Courts in Connecticut, a long list
25 of federal courts of appeals, the U.S. Supreme Court,

800.523.7887

Associated Reporters Int'l., Inc.

Page 53

1 Metro Enterprises/John Scarfi - 7-15-19
2 et cetera. I practice law as a solo practitioner in
3 the state of Ohio and I am also employed fulltime as
4 a tenured law professor at the Northern Kentucky
5 University, Salmon P. Chase College of Law, which is
6 in the Cincinnati metropolitan area. I'm also the
7 Associate Dean for Professional Development at that
8 law school. I've been practicing law since 1999.

9 Q. Thank you. The first thing I'd
10 like you to do for everybody's benefit is explain a
11 little bit about the history and background of this
12 case. And -- and what the crux of the issue is
13 between the Department of Labor in New York and the
14 Department of Taxation in New York.

15 A. So --

16 MR. JACK: Judge, before we go on, I
17 mean, this -- I'm not sure, is this a fact witness or
18 an expert witness of some side?

19 MR. BOBROW: This is an expert
20 witness, Your Honor. She's --.

21 A.L.J. RUSSO: An expert in what
22 regard?

23 MR. BOBROW: In the sales tax -- sales
24 -- state and local taxation and sales tax.

25 A.L.J. RUSSO: And what is the nature

800.523.7887

Associated Reporters Int'l., Inc.

Page 54

1 Metro Enterprises/John Scarfi - 7-15-19

2 of her testimony?

3 MR. BOBROW: Her testimony is going to
4 explain why, for example, there are other courts that
5 have held what we called Mr. Jack refers to as the
6 sale of script, subject of tax. And she also -- we
7 had filed a motion to hold this hearing in abeyance
8 and we explained the reason was two other ongoing
9 litigations that relate to the same legal issue we
10 are saying that we have here today. And also the
11 parties, and Metro is a party to those other
12 litigations again which deal with the sales taxation
13 of script. And she wants to explain why we filed
14 that motion for abeyance and the significance of it.

15 THE WITNESS: If I may, Your Honor, I
16 just --

17 A.L.J. RUSSO: No, no, no, not yet.
18 Mr. Jack --.

19 MR. JACK: I'm not sure -- I mean, I'm
20 just a little lost here, because I mean, who filed
21 the motion for, to hold the matter in abeyance?

22 MR. BOBROW: The petitioners have
23 filed a motion to hold this hearing in abeyance
24 because there are several other ongoing actions in
25 other courts, dealing with the sales taxation of

800.523.7887

Associated Reporters Int'l., Inc.

Page 55

1 Metro Enterprises/John Scarfi - 7-15-19
2 script, and -- and Metro Enterprises is a party, it's
3 totally relevant.

4 MR. JACK: Well, I'm fully familiar
5 with the -- the motion that you filed for summary
6 judgment and to hold the matter in abeyance, but was
7 it filed by you or by this witness?

8 MR. BOBROW: It was filed -- it was
9 prepared by this witness and I filed it.

10 MR. JACK: And, Judge, I mean, I don't
11 see how this person qualifies to testify as an expert
12 on anything in this -- in this case. And -- and
13 yeah, that she's not a fact witness, I -- maybe she
14 is, but she have to quality how she -- she -- she
15 knows the facts that she would then testify about
16 here and I mean -- but she -- Mr. Bobrow claims that
17 she's an expert, I can't see for a qualification as
18 an expert testimony or her relevant to any testimony
19 here -- the relevance of her testimony to anything
20 that's going to be discussed here today.

21 MR. BOBROW: I just said that the
22 other actions from which was -- more than one, that
23 deals with the same sales taxability of the script
24 the witness prepared.

25 THE WITNESS: I don't mean to

800.523.7887

Associated Reporters Int'l., Inc.

Page 56

1 Metro Enterprises/John Scarfi - 7-15-19
2 interject, but I think I can clear this up. And I do
3 need for my own professor -- professional licensure
4 to dispel the notion that I am an expert witness in
5 state and local taxation. I am not an expert in
6 state and local taxation. I am an expert in other
7 legal matters that will not be relevant today. I
8 factually can offer information that I believe to be
9 useful to Your Honor, because I represent related
10 entities in other litigation that has the exact same
11 subject matter as this case.

12 A.L.J. RUSSO: Okay. As admitted by
13 the witness, she is not an expert in sales tax,
14 especially in particular state and local sales tax,
15 so she will not be qualified as an expert for
16 testimony.

17 Therefore, opinion testimony will not
18 be allowed. If you have questions for her with
19 regard to factual issues for which she has first-hand
20 knowledge of this matter, which is relevant, I'll
21 allow that type of testimony. But there will not be
22 any opinion testimony as far as what she thinks of
23 the sales tax law.

24 BY MR. BOBROW: (Cont'g.)

25 Q. Could you explain what the other

800.523.7887

Associated Reporters Int'l., Inc.

Page 57

1 Metro Enterprises/John Scarfi - 7-15-19
2 litigations are? The two other litigations that deal
3 with this issue of sales taxability?

4 A. Yes, absolutely. And so that the
5 record is clear, I'll preface my answer to that
6 question by identifying the ways that I connect to
7 those other lawsuits. I have a longstanding
8 relationship with Mr. Capeci, who was in the room
9 this morning, and is a principal in two different
10 companies. One is called M.L.B. Enterprises Corp.
11 and one is called 44th Enterprises Corp. and I have
12 represented both Mr. Capeci personally and those two
13 entities in a number of different lawsuits dealing
14 primarily with employment-related matters, lawsuits
15 filed against the entities or him personally, by
16 current or former employees. I have also represented
17 those entities with respect to first amendment
18 challenges in federal court dealing with a
19 constitutional right of free speech.

20 So over the years, I have developed a
21 strong working knowledge of Mr. Capeci's business
22 model, 44th Enterprises Corp. and what it does and
23 how it functions and M.L.B. Enterprises Corp and what
24 it does and how it functions as well. I've
25 personally visited each of those businesses and have

800.523.7887

Associated Reporters Int'l., Inc.

Page 58

1 Metro Enterprises/John Scarfi - 7-15-19
2 observations that I can make based on my own
3 investigation and observation in those businesses.

4 Now, that being said, you asked me
5 about different litigation related as I understand to
6 the subject of sales tax, the same question that is
7 being addressed today. And there are two different
8 pieces of litigation currently pending, where the
9 question of sales tax and script is raised. One of
10 them is a case entitled Dennis versus 44th
11 Enterprises et al. There's a number of other parties
12 to that and I would have to see the pleading to give
13 you the whole name of it. But the -- the short title
14 is Dennis versus 44th Enterprises.

15 That case began because Ms. Dennis,
16 who was a -- or is a former employee of 44th
17 Enterprises, a dancer, filed a lawsuit against 44th
18 and Mr. Capeci alleging violations of the Fair Labor
19 Standards Act, the New York Labor Law and other labor
20 related regulations.

21 She claims, in essence, that she was
22 not paid what she was owed as an employee working at
23 44th. That case has now transformed into a much
24 larger legal proceeding because it is now an
25 interpleader action. So 44th Enterprises filed an

800.523.7887

Associated Reporters Int'l., Inc.

Page 59

1 Metro Enterprises/John Scarfi - 7-15-19
2 interpleader complaint as part of its answer to the
3 class action complaint filed by Ms. Dennis. And 44th
4 Enterprises, in filing that interpleader, also
5 brought in Metro Enterprises and Mr. Scarfi, your
6 client Mr. Bobrow, as -- as cross defendants in that
7 case. 44th Enterprises additionally interpleaded the
8 tax department as a party into that interpleader
9 action as well. And the claims in that case deal
10 with a conflict between Fair Labor Standards Act, New
11 York Labor Law and the presumption that money paid by
12 a customer to a service employee is a gratuity on the
13 one hand, and then the tax department's position on
14 the other hand that that same money is actually money
15 belonging to the employer and subject to sales tax.

16 And so that question of Labor Law on
17 the one hand Tax Law, on the other hand is teed up
18 exactly in the same way that it is here in that
19 interpleader action which is pending in Manhattan.

20 Q. And what's the forum?

21 A. It's the Supreme Court in
22 Manhattan.

23 Q. Okay.

24 A. And then -- that's the first
25 piece. And then there is another lawsuit, which

800.523.7887

Associated Reporters Int'l., Inc.

Page 60

1 Metro Enterprises/John Scarfi - 7-15-19
2 M.L.B. Enterprises has filed. And I should clarify
3 because we're listing a lot of parties that M.L.B.
4 Enterprises is not a party to the interpleader
5 action, only 44th Enterprises is and Mr. Capeci,
6 Metro and Mr. Scarfi and the tax department and Ms.
7 Dennis and the class, she represents lot of parties.
8 A shorter with the parties exists in the federal
9 lawsuit. So another federal action has been filed in
10 the Southern District of Manhattan, which is M.L.B.
11 Enterprises only, not Mr. Capeci, just the
12 corporation against the tax department.

13 And that case also seeks to
14 declaratory judgment resolving the tension that I've
15 outlined between Labor Law on the one hand, both
16 federal and state and then State Tax Law on the other
17 hand.

18 Q. Uh-huh. Thank you. What do you
19 see as the adverse consequences of -- of these two --
20 these two suits? By that I mean, can Mr. Scarfi
21 and/or Metro be put in a position of owing the same
22 money to the Labor Department and the Tax Department?

23 A. So that --

24 MR. JACK: Judge, I'm going to have to
25 object to this question because it's going to call

800.523.7887

Associated Reporters Int'l., Inc.

Page 61

1 Metro Enterprises/John Scarfi - 7-15-19
2 for her expert opinion and what she thinks is -- and
3 how she thinks is going to affect that tax periods
4 here. And what the witness has just done for the
5 last five minutes or so is -- is described the
6 posture of these matters that are before the district
7 court, the Federal District Court and the Supreme
8 Court in Manhattan. What we're here today to talk
9 about is a sales tax not transactions allegedly
10 conducted by Metro Enterprises Corp. and these
11 various entities was subject to sales tax. It has
12 nothing to do with a wage labor dispute. I mean, if
13 you look at the motion filed by Mr. Bobrow in
14 attempts to paint these -- these -- these things as
15 if they're the same thing that the receipts of a club
16 are nothing but gratuities, and nobody has any right
17 to assert that sales taxes is due on them. I mean,
18 those are factual allegations that you would have to
19 decide -- would have to decide -- sorry, whether or
20 not they're actually true and whether or not the
21 department is -- is filing the tax gratuities. This
22 witness can't add anything to that from what I'm
23 hearing here, I mean, what she's done is described
24 the posture again of these things in the District
25 Court and in the Supreme Court. She can't add

800.523.7887

Associated Reporters Int'l., Inc.

Page 62

1 Metro Enterprises/John Scarfi - 7-15-19
2 anything else, that's going to be of any very value
3 or of have any relevance to these proceedings.

4 A.L.J. RUSSO: Your objection is
5 sustained. As I already instructed you, Mr. Bobrow,
6 I was not going to accept opinion testimony from this
7 witness. I said if she's specifically has factual
8 knowledge of the case that's before us that that was
9 the proper testimony to accept.

10 As far as the status of other pending
11 cases, that's something that's open to public record.
12 And if you wish to cite it in your briefs, you
13 certainly may, but I'm interested in factual
14 testimony regarding the issues before us today. So
15 if you have questions for her with that regard, that
16 she has first-hand knowledge, you may continue.

17 BY MR. BOBROW: (Cont'g.)

18 Q. Jennifer, in any of these
19 proceedings, have any of these courts confirmed the
20 fact that the dances are employees?

21 MR. JACK: Objection, Judge. I mean,
22 again, if you look at the filings and you look at
23 even just the summary motions filed, but
24 interestingly, what petitioners seem to fail to
25 include in that motion that they file is their answer

800.523.7887

Associated Reporters Int'l., Inc.

Page 63

1 Metro Enterprises/John Scarfi - 7-15-19
2 to Mrs. Dennis' complaint and in the answer,
3 petitioners state that these performers are in fact
4 independent contractors, not employees.

5 So Ms. Dennis alleged that she's an
6 employee, petitioner responded by saying, "You're not
7 an employee, you're -- you're an independent
8 contractor". So what they're attempting to do now is
9 to make you believe that their position has been that
10 these are employees of the club. That's not been
11 their position, that's going to become clear to you
12 once you -- you review the entire record in this
13 matter.

14 Again, this witness can't add or
15 subtract anything from this. As you said, these are
16 all public records, that can easily be referenced in
17 briefs and arguments and wherever else, but this
18 witness can't do anything to add or subtract from the
19 papers that's been filed in those -- in these courts,
20 whether it'd the Federal District Court or the
21 Supreme Court in Manhattan. Those papers were filed
22 and responded to. And -- and again, the response --
23 petitioner's response is conveniently omitted from
24 the motion for summary determination that Mr. Bobrow
25 filed and it's obvious why. Because in this motion

800.523.7887

Associated Reporters Int'l., Inc.

Page 64

1 Metro Enterprises/John Scarfi - 7-15-19
2 he is claiming, these are employees of the club. As
3 if you weren't -- you wouldn't do your own due
4 diligence and -- and figure out that, oh, you didn't
5 claim that in your response to -- to the summons
6 filed, you claim they were independent contractors,
7 since when did you start claiming that they're --
8 they're in fact employees, that's simply an
9 allegation by Mrs. Dennis and the class that they're
10 employees, which petitioners opposed. So again, this
11 witness, she can testify about factual issues to do
12 with -- with the sales tax assessments against Metro
13 and against Mr. Scarfi, but anything else would just
14 be her opinion as to what she thinks this means and
15 what she thinks, how she thinks this is going to
16 affect Metro and Mr. Scarfi and so on and so which is
17 all opinion that if she had qualified as an expert
18 witness, she would have been able to offer, but she
19 can't because she admitted that she isn't an expert.

20 MR. BOBROW: Jennifer, is there
21 anything Mr. Osborne is saying that is inaccurate?

22 THE WITNESS: Yes, there are several
23 things.

24 A.L.J. RUSSO: No, no, no, that's --
25 that's not correct for her to opine on what Mr. Jack

800.523.7887

Associated Reporters Int'l., Inc.

Page 65

1 Metro Enterprises/John Scarfi - 7-15-19
2 is saying when I rule on the objections. I agree
3 with Mr. Jack. Again, if she has factual knowledge
4 regarding this particular case, that's the
5 appropriate line of testimony. The other cases are
6 in different jurisdictions, there has been no final
7 outcome in them, she cannot opine what the final
8 outcome is going to be. I'm, at this point, only
9 interested in facts bearing on this specific case for
10 which she has personal knowledge. If you have
11 questions in that regard, you can continue with this
12 witness. Otherwise, it's time to move on to another
13 witness.

14 BY MR. BOBROW: (Cont'g.)

15 Q. Jennifer, is there anything
16 factual you can add to this case?

17 A. Yes, as a part of my
18 representation of Mr. Capeci and his two business
19 entities, I have conducted lots of personal
20 investigation about his business model, the way his
21 business operates, who the significant people are
22 that he contracts with and does business with and
23 having a very solid working understanding of how the
24 business model functions.

25 Q. What is the relationship between

800.523.7887

Associated Reporters Int'l., Inc.

Page 66

1 Metro Enterprises/John Scarfi - 7-15-19

2 M.L.B. and Metro Enterprises?

3 A. It's contractual.

4 Q. You know, the way I used to think
5 about it is it's -- I go into Walmart, I see a
6 Citibank A.T.M. machine. Is there any analogy to be
7 drawn between the A.T.M. machine and the -- and the
8 store?

9 A. Well, if you're asking me what
10 M.L.B. and Metro contract to do --

11 Q. Yes.

12 A. -- I can definitely explain how
13 that contract works and what it is about. So as the
14 Court probably already knows and I'll be in 44th
15 operate adult nightclubs. They sell drinks of the
16 alcoholic and non-alcoholic variety, they have a
17 space where people can come in, there's music
18 playing, you know, it's -- it's similar to any sort
19 of traditional nightclub that any of us may have been
20 to.

21 And then in various locations within
22 the business establishments, there are performers who
23 are engaging in dance performances. Some of those
24 occur on a public stage area and then some of those
25 occur in rooms that are smaller than -- than the

800.523.7887

Associated Reporters Int'l., Inc.

Page 67

1 Metro Enterprises/John Scarfi - 7-15-19
2 general public area. To facilitate customers being
3 able to offer gratuities to the dancers who are
4 performing both in the public space and then in the
5 party rooms. M.L.B. and 44th have contracted with
6 Metro which is a financial processing company to run
7 credit cards for customers who wish to offer
8 gratuities to the dancers.

9 And so Metro provides machines in the
10 club establishments which will, in essence, just spit
11 out a voucher enabling the customer to offer a credit
12 card gratuity to the entertainers as opposed to cash.

13 Now, from 44th and -- and -- and
14 M.L.B.'s perspective, that's a necessary service that
15 they need for their customers because there are
16 A.T.M. withdrawal limit. So certainly one option,
17 business option or decision that Mr. Capeci in
18 running these companies could have made was to just
19 put an A.T.M. machine in the business. And I think
20 we've all been to places like cash restaurants or
21 where you get your nails done or something like that,
22 where there might be an A.T.M. there so that you can
23 go withdraw cash and pay that way. But banks have
24 limits on daily withdrawals from your A.T.M. or from
25 your bank account. And so Mr. Capeci made a business

800.523.7887

Associated Reporters Int'l., Inc.

Page 68

1 Metro Enterprises/John Scarfi - 7-15-19
2 decision that it would be in the best interest of his
3 customers to contract with a company like Metro,
4 enabling them to, in essence, put the gratuities that
5 they desire to spend on their credit card, which --
6 and then they could go above that daily A.T.M. limit.

7 Q. Thank you.

8 MR. BOBROW: I had earlier asked you
9 about the motion for summary determination. So I
10 want to put it in the record.

11 A.L.J. RUSSO: I'm going to mark for
12 identification purposes, Petitioner's Exhibit One.
13 And is this the complete document that you had filed
14 --

15 MR. BOBROW: Yes.

16 A.L.J. RUSSO: -- previously? Okay.
17 All right and --.

18 BY MR. BOBROW: (Cont'g.)

19 Q. Jennifer --

20 A.L.J. RUSSO: Sorry, I was going to
21 accept into the records since we --

22 MR. BOBROW: Thank you.

23 A.L.J. RUSSO: -- already have it in
24 our file. I will accept into the record,
25 Petitioner's Exhibit One.

800.523.7887

Associated Reporters Int'l., Inc.

Page 69

1 Metro Enterprises/John Scarfi - 7-15-19

2 BY MR. BOBROW: (Cont'g.)

3 Q. Jennifer, did you prepare this
4 motion for determining -- summary determination?

5 A. May -- may I actually look at the
6 Court's copy --

7 A.L.J. RUSSO: Oh, I'm sorry, yeah.

8 THE WITNESS: -- I just want to make
9 sure that I'm looking at the same exact thing --.

10 MR. BOBROW: Right.

11 A.L.J. RUSSO: Sure. Bear with me.

12 THE WITNESS: -- just to be careful.

13 MR. BOBROW: That's fine.

14 A.L.J. RUSSO: Handing the witness
15 Exhibit One.

16 THE WITNESS: Thank you.

17 Okay. I have reviewed what's been
18 marked as Exhibit One. And I participated in the
19 preparation of this document. I did not solely
20 author it.

21 BY MR. BOBROW: (Cont'g.)

22 Q. What was the purpose of the
23 document?

24 A. The purpose of the document was
25 to seek a summary determination from this court under

800.523.7887

Associated Reporters Int'l., Inc.

Page 70

1 Metro Enterprises/John Scarfi - 7-15-19

2 its rules for summary determination.

3 Q. And why did you think that was
4 appropriate?

5 A. Well, the -- the tax appeals
6 rules provide a mechanism for seeking summary
7 determination. And these were valid legal arguments
8 that, I believe, your client wanted to raise in this
9 proceeding.

10 Q. Thank you.

11 MR. BOBROW: I'm finished, Your Honor.

12 A.L.J. RUSSO: Okay. This -- I've
13 accepted Exhibit One --

14 MR. BOBROW: Thank you.

15 A.L.J. RUSSO: -- into the record.
16 You're -- you're done with your Direct?

17 MR. BOBROW: Yes.

18 A.L.J. RUSSO: Okay. Mr. -- Mr. Jack,
19 cross-examination?

20 MR. JACK: Sure, Judge. Thanks.

21 CROSS EXAMINATION

22 BY MR. JACK:

23 Q. And so the -- the script sale
24 function that Metro performs is an integral function
25 in these clubs, correct?

800.523.7887

Associated Reporters Int'l., Inc.

Page 71

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. I wouldn't call it integral. It
3 facilitates customers being able to offer gratuities
4 to employees.

5 Q. And when you say gratuities here,
6 what do you mean?

7 A. I mean gratuities that belong to
8 employees.

9 Q. So the money that you describe
10 actually belonged to the employee. And who are those
11 employees?

12 A. The employees are the dancers.

13 Q. And they are employees of whom?
14 Who employs them?

15 A. M.L.B and 44th.

16 Q. Okay. So these employees, the
17 money that Metro sales or receives from the sale of
18 the script belong to these employees, correct?

19 A. Yes, it does.

20 Q. Okay. Did Metro or 44th or any
21 of these other entities ask their dancers as far as
22 you know whether they want their monies to be handled
23 this way?

24 A. Yes, in fact, they did. There
25 are two different sets of contracts. There's a

800.523.7887

Associated Reporters Int'l., Inc.

Page 72

1 Metro Enterprises/John Scarfi - 7-15-19
2 contract that the employees maintain with M.L.B. or
3 44th, whichever club they are working at. And then
4 there's a separate contract that the entertainers
5 maintain with Metro. The contract that the
6 entertainers maintain with M.L.B. and 44th most
7 definitely indicates that all script paid to them by
8 customers belongs to them.

9 Q. So this was an idea that came
10 from the employees? That says this is the way you
11 want, you can handle all the money?

12 A. I can't speak to the origin of
13 the idea. The contract is very clear that the
14 employees will keep script paid to them by customers
15 as their own property. And that is actually in the
16 employee's best interest because they can actually be
17 paid gratuities above and beyond daily A.T.M. limits.

18 Q. Okay. That's good for everybody.
19 So the thirty-eight million dollars here in -- in
20 sales that Metro made belongs to these employees?

21 A. I don't believe that any sales
22 have been made. There is money that has been
23 processed. The entertainers -- that is the
24 entertainer's money because it was a gratuity paid to
25 them directly by customers.

800.523.7887

Associated Reporters Int'l., Inc.

Page 73

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. So that's thirty-eight million
3 dollars in gratuities you're saying?

4 A. Yes.

5 Q. Okay. So what portion of that is
6 for the dance fees that were charged to the patrons
7 for the dancers?

8 A. Patrons were never charged the
9 dance fees. Patrons paid gratuities to entertainers
10 of their own volition, of their own choice and then a
11 negotiated transaction between the employee and the
12 customer.

13 Q. Oh, so they negotiated the
14 gratuity?

15 A. The gratuities could have been
16 discussed at some point, yes.

17 Q. Oh, that's --.

18 A. That's not a dictated or
19 mandatory transaction. There are no dance fees that
20 are mandatory ever for anyone. There are no dance
21 fees that the club sets or dictates.

22 Q. Okay. And have you -- have you
23 looked at the books and records for any of these
24 entities that you claim to have knowledge of the
25 operation?

800.523.7887

Associated Reporters Int'l., Inc.

Page 74

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Books, I'm not -- you would have.

3 I -- I understand the term books to be a term of --
4 art in the tax context and because I am not a tax
5 expert you would need to clarify for me what you mean
6 by books for me to fully answer that. Records, yes,
7 I have looked at records.

8 Q. What records did you look at?

9 A. I've looked at tax returns. I've
10 looked at contracts. I've looked at arbitration
11 agreements. I've looked at legal pleadings. There
12 are likely more. Those are the ones that come to the
13 top of my head.

14 Q. Did you look at any general
15 ledgers?

16 A. Bank ledgers, no, I have not
17 looked at those.

18 Q. And so --?

19 A. I have looked at some bank
20 records. But I have not looked at what I would call
21 a ledger in -- in and out list of transactions. I
22 have not looked at that.

23 Q. Have you looked in the records
24 where it shows that Metro is paying over the entirety
25 of these thirty-eight million dollars to the -- to

800.523.7887

Associated Reporters Int'l., Inc.

Page 75

1 Metro Enterprises/John Scarfi - 7-15-19

2 the people to whom it belong?

3 A. No, Metro doesn't pay the
4 thirteen million dollars to the --.

5 Q. Thirty-eight.

6 A. Thirty-eight million, I'm sorry.
7 I misunderstood you. Metro doesn't pay thirty-eight
8 million dollars. Metro keeps a twenty percent
9 processing fee from customers at the beginning. And
10 a ten percent redemption fee from entertainers at the
11 end. So I'd have to do the math and with -- I mean,
12 I have a pen here but that might be difficult for me
13 to do without a calculator.

14 Q. All right. So let's see. So
15 there's thirty-eight million dollars in -- in sales
16 that the department asserted was from the sale of
17 script and Metro keeps what -- twenty percent you
18 said of that?

19 A. No. So first of all, script is
20 not sold. Script is not a tangible thing like this
21 pen or this binder clip or my shoes that someone
22 could just go buy. Script is a processed credit card
23 transaction.

24 Q. Okay.

25 A. Now, would you remind me the rest

800.523.7887

Associated Reporters Int'l., Inc.

Page 76

1 Metro Enterprises/John Scarfi - 7-15-19
2 of your question because you -- you were saying sale
3 of script and I just want to be clear that script is
4 not a thing like these two items in my hand.

5 Q. Yeah, and again, I mean, you're
6 not here to offer your opinion -- I mean, so the
7 Judge would decide whether the -- is true or whether
8 the -- that exchange is a sale.

9 But the question is Metro has sold
10 thirty-eight million dollars -- oh, Metro took in
11 receipts for thirty-eight million dollars for --
12 where customers handed over their -- their credit
13 cards to Metro. And added -- for the period involved
14 here, that added up to thirty-eight million dollars.
15 You're saying that Metro keeps twenty percent which I
16 think would roughly be three million four hundred
17 thousand dollars?

18 A. Yeah, right.

19 Q. Thereabouts?

20 A. Sure.

21 Q. So there's thirty-five million
22 dollars left then, roughly?

23 A. Right.

24 Q. That belongs to the dancers?

25 A. Yes, I am -- I will be completely

800.523.7887

Associated Reporters Int'l., Inc.

Page 77

1 Metro Enterprises/John Scarfi - 7-15-19

2 candid. I am not a great math person. So to the
3 extent that you are asking me to compute precise
4 mathematical numbers in my head right now. I'm not
5 able to do that.

6 Q. No. I'm not ask --.

7 A. But, yes, whatever thirty percent
8 -- and actually it's -- it doesn't work out to be
9 thirty percent. Because hopefully, I can do this
10 correctly without a calculator. If you, if a
11 customer wants to tip a dancer a hundred dollars.
12 Let's say we'll start with a round number. They
13 would run a credit card transaction with Metro for a
14 hundred and twenty dollars. Twenty dollars stays
15 with Metro as Metro's processing fee. A hundred
16 dollars goes to the customer to give to the
17 entertainer.

18 Then when the entertainer takes that
19 hundred dollars of script and redeems it back with
20 Metro, Metro keeps another ten dollars which is the
21 ten percent redemption fee. So that means that much
22 of the hundred and twenty dollars, Metro has thirty.
23 And the entertainer has ninety. Percent wise, I
24 think that's three fours, right?

25 Q. Okay. All right. So -- so

800.523.7887

Associated Reporters Int'l., Inc.

Page 78

1 Metro Enterprises/John Scarfi - 7-15-19
2 there's ninety dollars that belongs to the
3 entertainer. Did you look at any books, any records,
4 whatever that's it, that ninety -- that ninety
5 dollars were transferred from Metro to these dancers?

6 A. Yes, the contracts.

7 Q. No, the contract says what
8 suppose, what -- what allegedly is going to happen.
9 Did you look at any books and records that
10 demonstrated that -- that transfer from Metro to the
11 dancers actually took place?

12 A. Yes, so I have seen --.

13 Q. What books and records did you
14 look at?

15 A. You would have to show them to me
16 for tell -- for me to tell you that I've actually
17 seen those. I can categorically describe for you
18 what I've seen. But again, it's not in front of me.
19 So you and I might be talking about different
20 documents. I just want the record to be clear there,
21 that I'm not looking at any set of documents. I'm
22 just --

23 Q. Okay.

24 A. -- describing categorically for
25 you what I've seen.

800.523.7887

Associated Reporters Int'l., Inc.

Page 79

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Just -- just so that we're clear.

3 I mean, what I'm asking about is if you saw any
4 account in the records that says, Metro owes Mrs.
5 Dennis five million dollars and this where Metro paid
6 Mrs. Dennis, five million dollars. Here is a
7 canceled check, here is the accountant record that
8 shows that that transfer actually took place. Did
9 you see anything like that?

10 A. I believe so. And again, without
11 the document in front of me, I would have to see it
12 in order to tell you if I had seen it. Do you
13 understand what I'm saying?

14 Q. I understand but --

15 A. Okay.

16 MR. JACK: -- and -- and I have no
17 further questions, Judge, thanks.

18 A.L.J. RUSSO: Thank you. Mr. Bobrow,
19 any re-direct?

20 MR. BOBROW: Yes.

21 RE-DIRECT EXAMINATION

22 BY MR. BOBROW:

23 Q. Mr. Jack referred to the
24 transactions with Metro as the sale of script. Is
25 that factually accurate?

800.523.7887

Associated Reporters Int'l., Inc.

Page 80

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. No, it's --.

3 MR. JACK: Objection, Judge. It's a
4 question that calls for his -- her opinion.

5 A.L.J. RUSSO: Sustained.

6 MR. BOBROW: Okay.

7 BY MR. BOBROW: (Cont'g.)

8 Q. How would you describe what Metro
9 does in converting credit cards?

10 A. As I understand what Metro does
11 and I speak as a person who has represented at a very
12 -- a business that has a contract with Metro and has
13 been in business with Metro for many years.

14 Metro processes credit cards for
15 customers. One of the -- so Metro incurs some cost
16 to it in doing that. First, it has to pay the credit
17 card company their processing fee. And those fees
18 vary, as I understand it, based on things like
19 rewards, points or free airline tickets, those things
20 that we, as consumers like to get from credit cards.
21 That -- that cost is actually incrementally passed
22 back to companies like Metro that process the card.

23 So there's -- those fees are hard to
24 quantify, they're typically between two-and-a-half
25 percent on the low end and then up to maybe five or

800.523.7887

Associated Reporters Int'l., Inc.

Page 81

1 Metro Enterprises/John Scarfi - 7-15-19
2 six percent on the high end, based on those rewards
3 points. And then Metro also absorbs the risk of
4 charge backs. So it is commonly known in
5 establishments like these, that some people will go
6 and spent quite a bit of money. And then the next
7 day regret that they did that. And they will call
8 their credit card company and put a holder on the
9 charge and that's called the charge back. And so
10 Metro, rather than M.L.B. and 44th absorb -- absorbs
11 the risk of those charge backs.

12 Q. Uh-huh.

13 MR. BOBROW: Thank you. No other
14 questions, Your Honor.

15 A.L.J. RUSSO: Thank you. Nothing
16 further, Mr. Jack?

17 MR. JACK: Nothing further, Judge.

18 A.L.J. RUSSO: Okay. I just have a
19 couple of questions

20 THE WITNESS: Yes, Your Honor.

21 A.L.J. RUSSO: So say a customer comes
22 into a club and has a credit card transaction through
23 Metro --

24 THE WITNESS: Yes.

25 A.L.J. RUSSO: -- purchases a hundred

800.523.7887

Associated Reporters Int'l., Inc.

Page 82

1 Metro Enterprises/John Scarfi - 7-15-19

2 dollars of -- of script. What sort of record do they
3 get of that transaction?

4 THE WITNESS: There's a -- like a
5 credit card receipt, a -- a piece of paper like spits
6 out of the credit card machine. Like if you go to a
7 restaurant and they have the mobile terminal and it's
8 -- it's the thing out that it's a piece of paper.

9 A.L.J. RUSSO: And then do they
10 present that receipt when they want to redeem the --
11 the script?

12 THE WITNESS: The customer would give
13 it -- the customer cannot redeem a script. Once the
14 customer has incurred the charge, that's their
15 charge. They can give the script to the dancers who
16 then redeems it. So yeah, they would just pass the
17 -- the paper.

18 A.L.J. RUSSO: So if they -- if they
19 want to use the script, they give it to -- to
20 whomever they're -- they're using a course --

21 THE WITNESS: Yes.

22 A.L.J. RUSSO: -- so that they
23 concede, actually have a hundred dollars of -- of
24 script.

25 THE WITNESS: Yes.

800.523.7887

Associated Reporters Int'l., Inc.

Page 83

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Okay. Can they use it
3 to purchase alcoholic beverages at the club?

4 THE WITNESS: No.

5 A.L.J. RUSSO: Okay. Anything further
6 from either party?

7 MR. JACK: No, Judge.

8 MR. BOBROW: No, Judge.

9 A.L.J. RUSSO: Okay. Thank you.
10 You're excused.

11 THE WITNESS: Oh.

12 MR. JACK: Mr. --.

13 A.L.J. RUSSO: Okay. You -- you've no
14 other questions for this, this witness.

15 MR. JACK: No, I don't.

16 A.L.J. RUSSO: Okay. You're excused.

17 THE WITNESS: Thank you, Your Honor.

18 A.L.J. RUSSO: And we will go off the
19 record for a moment.

20 (Off the record, 12:24 to 12:24)

21 A.L.J. RUSSO: So we took a brief
22 restroom break. If you'd call your next witness, Mr.
23 Bobrow.

24 MR. BOBROW: Yes. Mr. John Scarfi,
25 please, is my next witness?

800.523.7887

Associated Reporters Int'l., Inc.

Page 84

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Okay. Sir, raise your
3 right hand. Do you swear or affirm to tell the
4 truth, the whole truth and nothing but the truth?

5 MR. SCARFI: Absolutely.

6 WITNESS; JOHN SCARFI; Sworn

7 A.L.J. RUSSO: Okay. You may proceed.

8 DIRECT EXAMINATION

9 BY MR. BOBROW:

10 Q. John, could you tell -- tell us
11 your -- you -- where you live, what businesses you're
12 in --

13 A. All right. My name is John
14 Scarfi. I own Metro Enterprises one hundred percent.
15 I'm an officer. I'm a director. I'm the only
16 shareholder. Graduated from college and what else do
17 I get? I go to Las Vegas every year. And I go to
18 seminars and I listen to attorneys in the adult
19 entertainment industries speak on the requirements
20 that we have to follow for the Internal Revenue
21 Service, U.S. Department of Labor, New York State
22 Labor Law and occasionally, New York State Department
23 of Tax and Finance.

24 So it's important in my position that
25 I understand how all four of those government

800.523.7887

Associated Reporters Int'l., Inc.

Page 85

1 Metro Enterprises/John Scarfi - 7-15-19
2 agencies work and do the best I can to implement
3 those rules because if I make a mistake, I am
4 personally liable, every single one of -- could be
5 dancers, could be government, one never knows.

6 Q. Can you tell us how long you've
7 been in this industry?

8 A. I've been in this industry
9 twenty-five years.

10 Q. Okay. And could you tell us how
11 Metro operates?

12 A. Operates?

13 Q. And interaction with M.L.B.

14 A. Absolutely. So if a customer
15 comes in the club and he wants to pay a dancer with
16 cash, he pays it with cash. She keeps all the money.
17 He wants to come in the club, and he wants to pay
18 with a -- with a check, he can walk in the club and
19 hand her a check. He can walk in the club with a
20 gift card that he's happened to pick over at Duane
21 Reid and hand it to her. And she will sit and talk
22 with him. She might dance with him. She can run a
23 credit card on her own terminal, on her phone.

24 Today's technology or you get paid for
25 performing her services. But if our -- I'm the

800.523.7887

Associated Reporters Int'l., Inc.

Page 86

1 Metro Enterprises/John Scarfi - 7-15-19
2 customer who wants to go to the A.T.M. machine, where
3 he would pay a ten percent fee to get a hundred
4 dollars and he could take that hundred dollars. And
5 he can give it to that dancer and that's the other
6 way he could do. Now, if he doesn't -- he didn't
7 stop at Duane Reid, his A.T.M. card is maxed out.
8 And he doesn't have any cash left in his pocket. He
9 can run his credit card through my terminal. And for
10 twenty percent fee I will give him that hundred
11 dollars which then he can give to that entertainer
12 the same thing he gave it to the other time. And
13 when she redeems it, I take ten percent. I do not
14 show the ninety dollars that she got on my federal
15 income tax return. Only the twenty and the ten,
16 which basically mathematically is twenty-five percent
17 of the hundred and twenty dollars. So the ninety
18 dollars never comes on my federal income tax returns
19 because I don't consider it my money. And that's a
20 very important distinction because you got to follow
21 the fairly but standard tax and New York State Labor
22 Law that interwinds with this tax issue. How you
23 handle that money is determinative if it's subject to
24 sales tax or it's a gratuity. They have the
25 government here loves to talk about executive club

800.523.7887

Associated Reporters Int'l., Inc.

Page 87

1 Metro Enterprises/John Scarfi - 7-15-19
2 and they like to talk about -- and they like to talk
3 about hustler. But at one case they just don't want
4 to talk about is Hart versus Ricks from the Southern
5 District of New York. And I don't understand why.
6 Could it be with all the case that they have or
7 independent contractor cases. And Southern District
8 of New York is the only case where the dancers are
9 employees. And they tell us when it's a gratuity and
10 when it's not. And so by following those rules, all
11 these monies were a gratuity always was. We don't
12 include it in the employer's gross receipts. We only
13 include the service charge and the Court says if it's
14 not included in your gross receipts and the customer
15 paid it to the entertainer, it is their property as a
16 matter of law. So that's the federal government.
17 That's what they're telling me. And we have the
18 state over here. They say it's our policy -- it's
19 our policy. We charge sales tax on all script no
20 matter what. Doesn't matter if they are employees,
21 doesn't matter anything. We charge sales tax. You
22 figure it out. And that's why we're here today.

23 Q. John, can you -- can you explain
24 why you filed these interpleader actions and the
25 effect of the interpleader actions --

800.523.7887

Associated Reporters Int'l., Inc.

Page 88

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Absolutely.

3 Q. -- on this action?

4 A. Absolutely. It was the greatest
5 opportunity in my life to end this. Because we had
6 the dancers who's suing me for millions of dollars
7 because they say it's their money which it is. And
8 they say I unlawfully withheld ten percent which I
9 may or may not have, that's for the Court -- Judge to
10 decide. But then I have the tax department say no,
11 no, no. That's not their money. That's his money
12 and your money. And you owe a sales tax. I said you
13 both can't be right. Only one of you can be right.
14 So what do they do. They filed a motion to dismiss,
15 to get themselves out of the case. I said, hey, wait
16 a minute, they're here, you are here, fight it out
17 with them, it's not my money. But they refused to do
18 that. But they did say on the way out the door, if
19 the Court determines that it is a gratuity, there's
20 no tax due.

21 Q. Thank you.

22 A. That's where we're at. Any other
23 questions?

24 Q. Yes. Tell -- tell me --
25 actually, no, I'll stop here.

800.523.7887

Associated Reporters Int'l., Inc.

Page 89

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Thank you. Mr. Jack?

3 Cross?

4 MR. JACK: Sure, Judge.

5 CROSS EXAMINATION

6 BY MR. JACK:

7 Q. Mr. Scarfi --

8 A. Yes, sir.

9 Q. -- Metro has two lines of
10 business, correct?

11 A. Yes, refer dancers, process
12 credit cards.

13 Q. So with regard to the referral --

14 A. Yes, sir.

15 Q. -- part of it. How do you make
16 money, on that part?

17 A. How do I make money referring the
18 dancers?

19 Q. Yeah.

20 A. Well, I refer dancers to various
21 clubs because guys like to look at different girls,
22 get a girl from one club to another club that's good
23 for business. I make money when customers use the
24 credit card terminal, to pay the entertainers. I get
25 a twenty percent processing fee. Now, if he go to an

800.523.7887

Associated Reporters Int'l., Inc.

Page 90

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.T.M. machine, he gets ten percent processing fee.

3 But he doesn't have the credit risk that I have

4 because A.T.M. money comes out of your checking

5 account. And credit card is credit. They can charge

6 it back.

7 Q. Okay. And it's --.

8 A. It's a service charge.

9 Q. It's true, isn't it, that the ten
10 percent fee that you withhold --

11 A. That's true, I with -- withhold
12 ten percent.

13 Q. -- when the script is redeemed --

14 A. Correct.

15 Q. -- you withhold that because you
16 consider that your payment for the referral service?

17 A. I consider that a referral fee,
18 or service charge. It covers my four percent to five
19 percent with the credit card companies and charge
20 back stuff, yes.

21 Q. And that's -- and also for
22 referring the dancers, correct?

23 A. Yes.

24 Q. So -- I mean, but you don't keep
25 track of any of the cash transactions, correct?

800.523.7887

Associated Reporters Int'l., Inc.

Page 91

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Keep track of all of it.

3 Q. You keep track of --?

4 A. I kept books and records every
5 single day. There's a credit, there's a receipt says
6 ten thousand dollars, let's call it twelve. Two
7 thousand dollars is mine, ten thousand dollars is the
8 dancers', I have a book. Every dollar in the book,
9 the girl signs her name every single day of every
10 week and every club. The receipt matches the money
11 that gets paid out. I'm in the middle with an I.R.S.
12 sort of things, the tax department and all of my
13 books and records were there. And they're complete.
14 And just as a reminder, it reminded me that I.R.S.
15 They have their own rules too. So you could pay
16 somebody over six hundred dollars, you have to issue
17 ten ninety-nine. But because the I.R.S. considers
18 this in this industry, this is a payment from the
19 customer to the dancer. I don't have to issue ten
20 ninety-nine. That's their regulation. No ten
21 ninety-nine because it's not me paying the dancer, it
22 was the customer paying the dancer. So I don't have
23 issues on that dancers.

24 A.L.J. RUSSO: Oh, I'm just going to
25 interject for a moment.

800.523.7887

Associated Reporters Int'l., Inc.

Page 92

1 Metro Enterprises/John Scarfi - 7-15-19

2 THE WITNESS: Oh, yeah.

3 A.L.J. RUSSO: Just be -- be careful
4 about hitting the table --

5 THE WITNESS: I'm sorry.

6 A.L.J. RUSSO: -- because there's a
7 microphone there that's taking the testimony. So
8 that's going to interfere with recording and the
9 Court reporter's going to have a hard time --

10 THE WITNESS: Got it.

11 A.L.J. RUSSO: -- describing your
12 testimony lately.

13 THE WITNESS: Go ahead, Jack. Ask me
14 -- go ahead. Go away.

15 BY MR. JACK: (Cont'g.)

16 Q. So the customer who withdraws a
17 hundred dollars from this A.T.M. --.

18 A. No, not from -- from the A.T.M.?
19 Or from me?

20 Q. From the A.T.M.

21 A. Okay. Go ahead.

22 Q. And pays the dancer --

23 A. Uh-huh.

24 Q. -- that hundred dollars in the
25 cash --

800.523.7887

Associated Reporters Int'l., Inc.

Page 93

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Uh-huh.

3 Q. -- how do you keep track of that?

4 A. Out of the A.T.M. machine.

5 Q. How do you keep track of that

6 payment?

7 A. I'm confused. You're talking
8 about my credit card terminal or A.T.M. machine? I
9 have nothing to do with the A.T.M. machine.

10 Q. So do you keep track -- I asked
11 you just now, whether you keep track of all, if any
12 of it?

13 A. I keep track with the payments
14 the customers make with the script. I don't keep
15 track with the money the guys take out of the A.T.M.
16 machine. Those girls, that customer goes to the
17 A.T.M. machine withdraw five thousand dollars, give a
18 hundred dollars to everybody in the room and I would
19 have no one, would have any idea, not me, not the
20 only -- owner of the club. Those girls keep all the
21 money. Whether if they get -- that club does not
22 sell dancers for profit. Those girls collect every
23 single dollar, whether it's twenty dollars or a
24 hundred dollars.

25 MR. BOBROW: John, don't hit the

800.523.7887

Associated Reporters Int'l., Inc.

Page 94

1 Metro Enterprises/John Scarfi - 7-15-19

2 table. Don't -- don't hit the table.

3 THE WITNESS: Oh, can't hit the table.

4 Go ahead.

5 BY MR. JACK: (Cont'g.)

6 Q. So you don't keep track of the
7 cash, is that what --

8 A. Absolutely, no keep of -- no
9 track of cash at all.

10 Q. Okay.

11 A. You didn't know that? Oh, ask
12 the questions. Go ahead.

13 Q. No, I didn't. No, I said --.

14 A. Okay. Just curious. I thought
15 -- I think that we do another. No, we do not keep
16 track of any cash. Every dollar they get, they keep
17 it.

18 Q. You have one employee, correct?

19 A. Correct.

20 Q. And how many clubs do you have
21 this agreement with?

22 A. Four in New York.

23 Q. And do you have the agreement
24 with any clubs anywhere else?

25 A. Yeah, New Jersey.

800.523.7887

Associated Reporters Int'l., Inc.

Page 95

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Okay. And it's true, isn't it,
3 that you use the club employees to run the
4 transactions that take place in the Court?

5 A. I'm trying to explain. I guess
6 here we go, you're going to say, well, the club
7 employees swipe the credit card there? Well you
8 know, when the dancers an employee and the club
9 employees are employee, they're both employees. So
10 if I'm a waitress, and I'm getting a tip from a
11 customer and the bartender runs the card. I don't
12 see what that relevance that is to the fact that
13 ninety dollars is still her money.

14 Q. So is it true or not that that
15 the club employees are the ones --

16 A. They're all employees. So --.

17 A.L.J. RUSSO: Let him -- let him --

18 THE WITNESS: Yes.

19 A.L.J. RUSSO: -- finished the
20 question, please.

21 THE WITNESS: Yes, the answer's yes.

22 BY MR. JACK: (Cont'g.)

23 Q. Who -- who are the employees,
24 what do you mean by that?

25 A. Dancers, waitresses, bartenders,

800.523.7887

Associated Reporters Int'l., Inc.

Page 96

1 Metro Enterprises/John Scarfi - 7-15-19

2 they're all employees --

3 Q. Okay.

4 A. -- of the club.

5 Q. And who maintains those -- who --
6 who -- who does those entries on behalf of Metro when
7 the customer walks in and purchases their --.

8 A. Who swipes the card?

9 Q. Whatever needs to be done with
10 regard to the swiping the card?

11 A. A waitress, bartender, a host.

12 Q. Okay. Do you have any reason --
13 is there any reason why you would incur payments to
14 the clubs or in -- or vice versa?

15 A. I've no payments to the club.

16 Q. You make no payments, Metro makes
17 no payments to the club?

18 A. No.

19 Q. Okay. And the club makes no
20 payments to Metro then?

21 A. No.

22 Q. Did you get any loans from any
23 other clubs at any point during the audit period?

24 A. Yeah, there was one club during
25 the audit period -- period. Did I get a loan. I

800.523.7887

Associated Reporters Int'l., Inc.

Page 97

1 Metro Enterprises/John Scarfi - 7-15-19
2 wouldn't call it a loan. Either my credit card
3 terminal went down or their credit card terminal went
4 down. And he swapped out terminals for -- I don't
5 know, could have been six months. But the I.R.S.
6 makes allowances for that --

7 Q. So --

8 A. -- when they send you the ten
9 ninety-nine K. They asked you, have anybody else
10 used your credit card terminal? So you report to the
11 I.R.S. that yes, they used this credit card terminal
12 or I let somebody use my credit card terminal. So it
13 was all reported correctly. There's no --.

14 Q. So --?

15 A. I don't pay the club any money.
16 They don't pay me any money.

17 Q. So in that instance where the
18 credit card terminal went down you use the club's
19 credit card --

20 A. Yeah.

21 Q. -- terminal to run to your --

22 A. Yeah.

23 Q. -- transaction?

24 A. Yes.

25 MR. JACK: Okay. I don't have any

800.523.7887

Associated Reporters Int'l., Inc.

Page 98

1 Metro Enterprises/John Scarfi - 7-15-19

2 further questions, Judge.

3 A.L.J. RUSSO: Thank you. Mr. Bobrow,
4 any re-direct?

5 MR. BOBROW: Yes, I do have another
6 question, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BOBROW:

9 Q. I'll give you copy, John.

10 A. You asked me to read that?

11 A.L.J. RUSSO: Do you want me to mark
12 these for identification as the same exhibit or two
13 separate numbers?

14 MR. BOBROW: Yes, please.

15 A.L.J. RUSSO: Two separate numbers?

16 MR. BOBROW: Yes, please.

17 A.L.J. RUSSO: I will mark for
18 identification purposes, Exhibit Two and Three. What
19 I'm marking as two is the one with the date, January
20 7th, 2011 at the top, and one I'm marking as Three is
21 the date of July 30th, 2004 at the top.

22 THE WITNESS: Can you bring my glasses
23 out?

24 MR. BOBROW: Yeah, sure.

25 A.L.J. RUSSO: Go ahead.

800.523.7887

Associated Reporters Int'l., Inc.

Page 99

1 Metro Enterprises/John Scarfi - 7-15-19

2 BY MR. BOBROW: (Cont'g.)

3 Q. In my opening statement, I
4 referred to the prior audit of Metro Enterprises, the
5 predecessor of Metro.

6 A. Yeah, Pacific Club Services.

7 Q. Right. John, could you tell us
8 about the prior audit and can you tell us if Pacific
9 Club Holdings was operating or you operating in the
10 identical way they are?

11 A. Yes. That audit lasted, I don't
12 know, four years, multiple trips to Albany. Walton,
13 Plunkett, Mike Macaluso and they spent four-five
14 years with me. We went over the whole operation,
15 they understood the operation and they issued me no
16 change so my understanding that everything I was
17 doing was perfectly fine. I had conversations like I
18 said up in Albany and conversations with Devin.

19 Q. John, during that audit, did they
20 request Pacific to register as a vendor?

21 A. No, they did not.

22 Q. The issues that we're discussing
23 here today, issues that previously came up on the
24 prior audit?

25 A. Yes, I would say they were

800.523.7887

Associated Reporters Int'l., Inc.

Page 100

1 Metro Enterprises/John Scarfi - 7-15-19

2 basically identical. I changed the name from Pacific
3 Club Services because customers didn't like the word
4 club on their credit cards. So I went with a more
5 generic name, Metro Enterprises.

6 Q. Okay. Yeah. John, are you a
7 shareholder or do you have any ownership interests or
8 are you an officer of M.L.B. or 44th?

9 A. No.

10 Q. I left out one of the entities,
11 which is Lace. Are you an officer director, do you
12 have any ownership interest? Are you an employee of
13 Lace?

14 A. I am not an officer. I am not a
15 director. I am not an employee. I do not receive
16 any remuneration from any of those other corporate
17 entities. I don't have any access to their tax
18 returns, financial statements, bank accounts. I
19 really have no clue what goes on with their finances.

20 Q. Are you saying you're -- as far
21 as you're concerned, you're totally independent from
22 these other clubs?

23 A. I'm totally independent from
24 those clubs.

25 Q. Thank you.

800.523.7887

Associated Reporters Int'l., Inc.

Page 101

1 Metro Enterprises/John Scarfi - 7-15-19

2 MR. BOBROW: Your Honor, that's it.

3 A.L.J. RUSSO: Did you want to move to
4 admit Exhibits Two and Three?

5 MR. BOBROW: Yes, please.

6 A.L.J. RUSSO: Any objection, Mr. Jack

7 MR. JACK: No objection.

8 A.L.J. RUSSO: Okay. I'll accept
9 Petitioner's Exhibits Two and Three into the record.
10 And Mr. Jack, did you have any more cross examination
11 for the witness?

12 MR. JACK: Yes, Judge. I offer for
13 identification, hundred and nine pages of canceled
14 checks to the witness please, Judge, as Exhibit --

15 A.L.J. RUSSO: H.

16 MR. JACK: -- H.

17 A.L.J. RUSSO: I will mark for
18 identification purposes Exhibit H.

19 MR. BOBROW: Thank you.

20 CROSS EXAMINATION

21 BY MR. JACK:

22 Q. Mr. Scarfi, could you tell us
23 what's contained in these --?

24 A. Yes, those are checks from Metro
25 Enterprises and they are made out to Richard and

800.523.7887

Associated Reporters Int'l., Inc.

Page 102

1 Metro Enterprises/John Scarfi - 7-15-19

2 Jessica and Eureka, those are employees of the club.

3 So what happened was, when the credit
4 card terminals spits out a receipt, customers wanted
5 to leave the waitress money. So they would write, I
6 want to leave this girl, I don't know five dollars,
7 ten dollars whatever the amount was. So that money
8 came into my account since it wasn't my money, I
9 wrote a check back to the person whose money it was.

10 Q. But these are checks -- these are
11 all checks all one hundred and nine pages were all
12 checks --.

13 A. Yes, that not only happened in
14 that one club. So you had one club where the credit
15 card terminal print out a receipt and had extra line
16 on it so the customers could leave money for the
17 bartender or the waitress. So I allowed that to
18 happen. I didn't think I did anything illegal in
19 allowing that to happen. They were making money, so
20 I allowed it to happen. But then I gave them those
21 employees their money, it wasn't my money. But it
22 only happened in that one club, to the best of my
23 knowledge, it did not happen at any of those other
24 three clubs in New York or any other clubs in New
25 Jersey.

800.523.7887

Associated Reporters Int'l., Inc.

Page 103

1 Metro Enterprises/John Scarfi - 7-15-19

2 MR. JACK: There are no objection,

3 Judge, the division would ask that Exhibit H.

4 A.L.J. RUSSO: H.

5 MR. JACK: Be admitted into evidence.

6 A.L.J. RUSSO: Any objections?

7 MR. BOBROW: No, Your Honor.

8 A.L.J. RUSSO: Okay. I'll accept the

9 Division's Exhibit H into the record.

10 MR. JACK: And I have no further

11 questions, Judge.

12 A.L.J. RUSSO: Okay. If you could

13 hand me H back, please.

14 MR. BOBROW: Returns that?

15 A.L.J. RUSSO: Yeah. Thank you.

16 MR. JACK: But, actually, Judge, I
17 mean, this one, I'm going to offer for identification
18 for the witness packet containing ninety-four pages
19 as Exhibit I.

20 A.L.J. RUSSO: Marking for
21 identification purposes Exhibit I, and I am handing
22 it to Mr. Scarfi.

23 THE WITNESS: Yeah, okay. I got it.
24 What's your question?

25 BY MR. JACK: (Cont'g.)

800.523.7887

Associated Reporters Int'l., Inc.

Page 104

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Can you tell us what's on -- on
3 the first page of Exhibit I?

4 A. Yes. First page of Exhibit I, it
5 says dollars, amount a hundred and twenty dollars.
6 So that would be a hundred dollars that was going to
7 the entertainer and the twenty percent service
8 charge, tip line for an additional tip, which at this
9 point, we wouldn't allow them to do that anymore.
10 Total a hundred and twenty dollars. Now, it says
11 they're not refundable. There's a twenty percent
12 service charge. They will only be honored at that
13 location. They are subject to expiration and they're
14 only good for tipping purpose only. You can't use
15 them for alcoholic beverages or private room fees,
16 yes, that's what it says.

17 Q. Okay. And pages three through
18 ninety-four, are those, again, bank statements and
19 --?

20 A. Those are bank statements.

21 Q. -- and canceled checks --

22 A. Yes.

23 Q. -- for Metro?

24 A. Yes, and do you want me to talk
25 about that?

800.523.7887

Associated Reporters Int'l., Inc.

Page 105

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. No.

3 MR. JACK: If there are no objection,

4 Judge --

5 THE WITNESS: I'll talk about that.

6 MR. JACK: -- I ask that Exhibit I be
7 admitted into evidence.

8 A.L.J. RUSSO: Any objections, Mr.

9 Bobrow?

10 MR. BOBROW: No.

11 A.L.J. RUSSO: Okay. I'll accept the
12 Division's Exhibit I into the record. Can you hand
13 me that, please?

14 THE WITNESS: Yeah.

15 A.L.J. RUSSO: Thank you.

16 THE WITNESS: Can I speak about bank
17 statements --

18 A.L.J. RUSSO: Only if there is --
19 only if there is a question pending, yes.

20 THE WITNESS: Okay, thank you.

21 MR. JACK: Division is going to offer
22 for identification a hundred and eighty-seven page
23 packet and offered as Division's Exhibit -- is it J?

24 A.L.J. RUSSO: J. We're up to J.

25 Marking for identification purposes

800.523.7887

Associated Reporters Int'l., Inc.

Page 106

1 Metro Enterprises/John Scarfi - 7-15-19

2 Division's Exhibit J and I'm handing it to the
3 witness.

4 BY MR. JACK: (Cont'g.)

5 Q. Again, Mr. Scarfi, the same
6 question, are these Metro's bank account information?

7 A. Yeah.

8 Q. Identification as Division's --

9 A.L.J. RUSSO: Are we done with J?

10 MR. JACK: Oh, yes.

11 A.L.J. RUSSO: And you'd like that the
12 record --

13 MR. JACK: If there is no objection,
14 Judge, the Division --

15 `MR. BOBROW: No objection.

16 MR. JACK: -- moves that Exhibit J be
17 admitted into evidence.

18 A.L.J. RUSSO: I accept into the
19 record the Division's Exhibit J.

20 MR. JACK: And the Division would like
21 to offer for identification as Division's Exhibit K,
22 twenty-two page document.

23 A.L.J. RUSSO: Marking for
24 identification purposes the Division's Exhibit K.

25 BY MR. JACK: (Cont'g.)

800.523.7887

Associated Reporters Int'l., Inc.

Page 107

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Mr. Scarfi, are these Metro's
3 file balances and transaction detail accounts?

4 A. To the best of my knowledge.

5 MR. JACK: If there are no objections,
6 Judge, Division moves that Exhibit --

7 MR. BOBROW: No -- no objection.

8 MR. JACK: -- K be admitted into
9 evidence?

10 A.L.J. RUSSO: I accept into the
11 record the Division's Exhibit K.

12 MR. JACK: Okay. Judge, Division
13 offers for identification as Division's Exhibit L,
14 two hundred and seventy-four page packet and which
15 seems again, the content is bank information
16 belonging to Metro.

17 A.L.J. RUSSO: Marked for
18 identification Exhibit L. I don't know if he wants
19 to ask you questions -- okay, hold on.

20 BY MR. JACK: (Cont'g.)

21 Q. Mr. Scarfi, again, are these bank
22 statements belong to Metro Enterprises?

23 A. To the best of my knowledge.

24 MR. JACK: If there are no objection,
25 Judge, the Division moves Z -- are we up to Z yet?

800.523.7887

Associated Reporters Int'l., Inc.

Page 108

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: That's L, you still
3 have ways to go before Z.

4 MR. JACK: Exhibit L be admitted into
5 evidence.

6 MR. BOBROW: No objection.

7 A.L.J. RUSSO: I accept into the
8 record the Division's Exhibit L.

9 MR. JACK: The Division like to offer
10 for identification as Exhibit M, a packet containing
11 hundred and fifty-four pages.

12 A.L.J. RUSSO: Marking for
13 identification purposes Exhibit M.

14 BY MR. JACK: (Cont'g.)

15 Q. Mr. Scarfi, are these business
16 documents that belong to Metro Enterprises
17 cooperation?

18 A. To the best of my knowledge.

19 MR. JACK: And if there are no
20 objections, Judge, the Division moves that Exhibit M
21 be admitted into evidence.

22 MR. BOBROW: No objection.

23 A.L.J. RUSSO: I accept into the
24 record the Division's Exhibit M.

25 MR. JACK: And can the witness please

800.523.7887

Associated Reporters Int'l., Inc.

Page 109

1 Metro Enterprises/John Scarfi - 7-15-19

2 see Exhibit M just that I have a set of question?

3 A.L.J. RUSSO: Sure.

4 BY MR. JACK: (Cont'g.)

5 Q. If you can please turn to page
6 twenty-one, the page number is on the bottom right-
7 hand corner. And -- and then twenty-two then which
8 is the page after that.

9 A. Page twenty-one.

10 Q. Yeah, then twenty-two now. Can
11 you please turn to page twenty-two.

12 A. I don't see a number on that
13 page.

14 Q. Yeah, that's why --.

15 A. What page?

16 Q. That's why I ask you to look at
17 twenty-one because -- because it's black here you're
18 not seeing the page number.

19 A. Okay.

20 Q. What is this receipt for?

21 A. Credit card, looks like a batch
22 report.

23 Q. And is there a tip or a gratuity
24 anywhere on the batch report?

25 A. Yes, yes there is a tip line on

800.523.7887

Associated Reporters Int'l., Inc.

Page 110

1 Metro Enterprises/John Scarfi - 7-15-19

2 there. This is back in 2000 -- I don't know, I can't

3 see a date on there. 2000 -- it's like 2010.

4 Q. I'm asking about the actual --.

5 A. The tip line?

6 Q. No, the actual receipt from the

7 batch report that says Metro Enterprises --.

8 A. Yes, Metro Enterprises, 689 8th

9 Avenue.

10 Q. Okay. So where is the tip line

11 in that half of the copy?

12 A. Where is the -- there is no tip

13 line on a batch report.

14 Q. Okay. That's -- that was my

15 question of whether or not there was a tip line

16 there.

17 A. It isn't -- no, this is the end

18 of the night.

19 Q. I know, I understand what it

20 means. So there is no tip --.

21 A. No, I wasn't sure.

22 Q. Yeah, there is no tip indicated

23 anywhere in the batch report, correct?

24 A. Well, when a customer puts a

25 credit card in the terminal and that receipt pops out

800.523.7887

Associated Reporters Int'l., Inc.

Page 111

1 Metro Enterprises/John Scarfi - 7-15-19

2 there could be a tip line, but at the end of the
3 night when you batch the whole day out, no, there's
4 no tip line.

5 Q. Do you have anything in any of
6 the documents I gave you where you could point to an
7 example where there is a tip line on the actual
8 receipt?

9 A. That isn't a receipt.

10 Q. No, I know I understand.

11 A. So --

12 Q. I understand that.

13 A. And if you're asking me do I have
14 one of those documents in front of me --

15 Q. Yeah.

16 A. -- right now, the answer is, I do
17 not.

18 Q. Yeah. When you receive the
19 credit card payments from the patrons --?

20 A. When a customer runs his credit
21 card.

22 Q. Yeah.

23 A. Right. The money comes into the
24 bank account from the merchant --

25 Q. Yes.

800.523.7887

Associated Reporters Int'l., Inc.

Page 112

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. -- services like visa,
3 MasterCard, American Express.

4 Q. And that money never enters your
5 books and records, correct? Except for their fees?

6 A. That's correct. And that's
7 critically important. I don't know how often I have
8 to say this, critically important. It makes the
9 decision of whether it's your money or it's not your
10 money. In fact, the Tribunal brought that issue up,
11 an executive club, in the little footnote. They
12 said, well, you know, this money wasn't in the gross
13 receipts, it could have been a gratuity, but
14 unfortunately didn't raise the issue. Those were
15 independent contractors. Now, we're talking about
16 employees go right to the southern district, which my
17 understanding is that we're wrong, has precedential
18 value just as much as the Third Department or the
19 Tribunal. The only case you got where the dancers
20 are employees and they get paid with script. What
21 did the Court said? If it's in the gross receipts,
22 it's the club's money. We can offset the minimum
23 wage, but if it's not, it's their money, end of
24 story. That's the federal rule.

25 Let's go right to the state rule.

800.523.7887

Associated Reporters Int'l., Inc.

Page 113

1 Metro Enterprises/John Scarfi - 7-15-19

2 This rule is easy to follow. Any payment to a
3 service worker is a gratuity, period. There is a
4 rebuttal presumption that only the employer can say
5 it's not a gratuity. You already conceded that it
6 is. So that's my answer to that question.

7 Q. So the money never enters in your
8 books and records?

9 A. No.

10 Q. And so you're not responsible,
11 are you, for getting it to the entertainers? Are
12 you?

13 A. I don't know if I have a
14 fiduciary responsibility, like if you have sales tax
15 as a -- as a business owner have a fiduciary or
16 trustee responsibility to make sure that money goes
17 to the government, I think they do and I think maybe
18 I have a contractual relationship to make sure that
19 they get their money. But yeah, I guess so.

20 Q. How do they get the money?

21 A. They bring their voucher. It's
22 like anybody, if you're a waitress and you get paid a
23 gratuity on a credit card in your restaurant, to make
24 it really simple, people can understand this. So
25 you've got a restaurant, you do ten thousand a week

800.523.7887

Associated Reporters Int'l., Inc.

Page 114

1 Metro Enterprises/John Scarfi - 7-15-19
2 in food and beverage, but yet your bank statement
3 says twelve thousand, why? Because the customers
4 left two thousand dollars on the credit card. Does
5 that two thousand dollar show up on your financial
6 statement or gross receipts? No, it does not. Why?
7 Because it's not the business's money. It's the wait
8 staff's money. That's not a receipt. It's the same
9 here. It's not a receipt, it's a payment to the
10 dancer. Now, you pay her with cash, there is no tax.
11 Pay her with a check, there is no tax. You pay her
12 with a gift card, there is no tax. And if you don't
13 include it in your gross receipts it's considered a
14 gratuity. It's a matter of law. That's the end of
15 the story.

16 And none of your cases except for the
17 Southern District were employees. You will think
18 it's unfair that you quote these three cases from all
19 the way upstate that have nothing to do with this
20 case.

21 This law has been on the books for
22 thirty years, litigated all over the country. Class
23 action lawyers love this because they never lose. If
24 it's not in the receipts, they win. That's why he's
25 going to lose.

800.523.7887

Associated Reporters Int'l., Inc.

Page 115

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. So what's their mechanism by
3 which the dancers get paid when they redeem their --?

4 A. They bring the script at the end
5 of the night, like if you are a waitress, you get a
6 tip on the credit card at the end of the night, you
7 go to the boss and they take the money out of the
8 cash scripts. There's nothing illegal about
9 redeeming their script for cash at the end of the
10 night.

11 Q. Okay. So --

12 A. Which the I.R.S. doesn't think
13 it's illegal. It's been a practice in this industry
14 for years and years and years.

15 Q. So somebody who is dancing at
16 M.L.B. Enterprises --

17 A. Yes.

18 Q. -- at the end of the night, what
19 boss do they go to?

20 A. They go to their boss and whoever
21 the manager is.

22 Q. And their boss decides how much
23 money Metro owes them?

24 A. No, they have the receipts. See
25 that's the whole purpose of script. Script tells you

800.523.7887

Associated Reporters Int'l., Inc.

Page 116

1 Metro Enterprises/John Scarfi - 7-15-19

2 I'm owed a hundred dollars. I'm owed a thousand
3 dollars. My name is Jane, it has her number on it in
4 three of the four clubs, there is a computer prints
5 out a voucher, Jane, number zero zero one, stick it
6 in the computer Jane gets her money, voucher is
7 extinguished. That's how it works.

8 Q. Okay. So do they get issued a
9 check or how do they get paid?

10 A. Cash.

11 Q. Why does they get --?

12 A. I go to the bank every week I
13 withdraw tens and sometimes a hundred thousand a week
14 in cash, that's perfectly legal.

15 Q. So you withdraw the cash and you
16 take it all -- make sure --.

17 A. Take it to the various clubs.

18 Q. Okay.

19 A. Yeah, to redeem the vouchers for
20 at the end of the night.

21 Q. And then the -- the bosses in the
22 various clubs use your cash and pay the girls at the
23 end of the night?

24 A. Yeah, it's not their money. It's
25 always the employees' money. It's never the club's

800.523.7887

Associated Reporters Int'l., Inc.

Page 117

1 Metro Enterprises/John Scarfi - 7-15-19
2 money. None of this is ever the club's money. The
3 ten percent that the A.T.M. machine gets that's not
4 the club's money. The twenty percent service charge
5 I charge, that's not the club's money. The ninety
6 dollars that the girl gets, that's legally always her
7 money. You're confusing clubs like 677 which is a
8 juice bar, they don't sell alcohol. They sell
9 dancers. Customers come in with cash, they come in
10 with credit cards they go to the bar. They say, I
11 want to buy five dances, they give the girl hundred
12 dollars he gets five tokens. They give back the
13 tokens to the girls at the end of the night they
14 redeem it, but they included the money in there.
15 They sold the dance. This doesn't happen here,
16 doesn't happen here. Didn't happen in an executive
17 club, but whatever. They didn't raise the issue.
18 But go right through Rick's, it's the easiest case in
19 the world, they're dancers. That opinion is quoted
20 by every district court judge since 2014 -- 2014 --
21 '19 -- '16 the fourth Circuit Court of Appeal quotes
22 our judge right there in the southern district. It's
23 a big deal.

24 Q. Do you know if any of these clubs
25 had entertainers walk in off the street and say, I

800.523.7887

Associated Reporters Int'l., Inc.

Page 118

1 Metro Enterprises/John Scarfi - 7-15-19

2 want to work here or did -- did they all come through
3 Metro?

4 A. Let's put it to you this way. I
5 don't -- if you're -- you walk into a place and
6 establishment, there are rights that are assigned to
7 you by the federal government and New York State.
8 You can't sign away those rights, you're going to
9 call it employment rights. If somebody walked into a
10 club and says, I will work for five dollars an hour.
11 The law says you can't do that. You can't work for
12 less than the minimum wage. You can't work for less
13 than what the government says you can work. So if
14 they walk in there and they work, as far as the
15 government is concerned, you're an employee.

16 Q. Did Metro provide all of the
17 dancers for M.L.B.?

18 A. No.

19 Q. And in your affidavit to the
20 Supreme Court in Manhattan you said that you sent
21 over five thousand --.

22 A. Yeah, thousands -- thousands --
23 thousands. I can't say a girl here and there and
24 walk into the place, I'm not there all the time.

25 Q. Walk in through what place, the

800.523.7887

Associated Reporters Int'l., Inc.

Page 119

1 Metro Enterprises/John Scarfi - 7-15-19

2 club you're in?

3 A. Into the club. I don't know if
4 they let a girl in to the building and work and she
5 didn't work, I couldn't honestly tell you that.

6 Q. As far as you know, you are the
7 primary supplier for the -- for the dancers for these
8 four clubs in New York?

9 A. I refer dancers to the clubs.

10 MR. JACK: Okay. I have no further
11 questions, Judge.

12 A.L.J. RUSSO: Thank you. Mr. Bobrow,
13 anything further for this witness?

14 MR. BOBROW: Yes, one question.

15 REDIRECT EXAMINATION

16 BY MR. BOBROW:

17 Q. John --

18 A. Yes.

19 Q. -- didn't you have an I.R.S.
20 audit and what did the I.R.S. conclude with respect
21 to the --?

22 A. Well, look, I can only tell you
23 that as far as the I.R.S. is concerned everything
24 that I'm doing is A-Okay. And I mean, I'm going to
25 say it anyway, whether anybody wants to listen. They

800.523.7887

Associated Reporters Int'l., Inc.

Page 120

1 Metro Enterprises/John Scarfi - 7-15-19

2 said that I'm right, tax department is wrong.

3 Q. They said that the --

4 A. That was from the I.R.S.

5 Q. -- the receipts they said were --

6 were not your receipts.

7 A. Correct. So I don't have to

8 issue 1099.

9 MR. BOBROW: Okay.

10 A.L.J. RUSSO: Okay. Thank you, Mr.

11 Scarfi.

12 THE WITNESS: You're welcome. I had

13 to give --

14 A.L.J. RUSSO: Give him that back,

15 please.

16 THE WITNESS: Sorry about that.

17 A.L.J. RUSSO: Thank you. Mr. Bobrow,

18 would you like to call your next witness before we

19 stop for lunch?

20 MR. BOBROW: Mr. Scarfi, he prefers

21 with his blood sugar --.

22 A.L.J. RUSSO: To take a break.

23 THE WITNESS: Yeah, I actually have --

24 actually I have blood sugar.

25 A.L.J. RUSSO: Okay. All right. So

800.523.7887

Associated Reporters Int'l., Inc.

Page 121

1 Metro Enterprises/John Scarfi - 7-15-19

2 we will go off the record for forty-five minutes, if
3 everybody could be back here at -- fifty minutes, so
4 we'll be back here at two o'clock and we'll break for
5 lunch at this point.

6 (Off the record)

7 A.L.J. RUSSO: Are we back on the
8 record?

9 THE REPORTER: Yeah.

10 A.L.J. RUSSO: Okay. Very good. We
11 took a recess for lunch and now we are returning to
12 the record.

13 Mr. Bobrow, your next witness, please.

14 MR. BOBROW: Thank you, Your Honor.

15 I'd like to take my opportunity to cross-examine the
16 auditor, Christine Scala.

17 A.L.J. RUSSO: Okay. If you would
18 please take the stand. You're still under oath from
19 this morning.

20 CHRISTINE SCALA; recalled

21 THE WITNESS: Yes.

22 CROSS-EXAMINATION

23 BY MR. BOBROW:

24 Q. Hi, Christine, how are you?

25 A. Hi.

800.523.7887

Associated Reporters Int'l., Inc.

Page 122

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. When I was reading your audit,
3 page eleven to be specific you particularly said,
4 correct me if I'm wrong, that the dancers were
5 employees, what do you need to look at the -- what
6 --?

7 A. No, I -- I -- I do recall that.
8 I just want to just say one thing. It was written by
9 the auditor but I did review it and, yes, it does say
10 that.

11 Q. Thank you. Did you consider the
12 relationship between the dancers, employees and the
13 Fair Labor Standards Act with the New York Labor Act?

14 A. No.

15 Q. Also on page eleven, the
16 statement is made -- let me back up one second.
17 Earlier in your testimony this morning, I think you
18 said that the entities were operating as one
19 enterprise.

20 A. Yes.

21 Q. Do you recall?

22 A. Yes.

23 Q. And in the audit report itself
24 you say the two entities are co-vendors?

25 A. Yes.

800.523.7887

Associated Reporters Int'l., Inc.

Page 123

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Could you explain what a co-
3 vendor is?

4 A. I could try. It would be -- I
5 probably don't know the legal definition but what we
6 were trying to say was that the establishment, the
7 club, let's say Diamond Club for instance. The two
8 entities, the two I.D. numbers that we're working
9 within that club really relied on each other for
10 sale. So they would like almost dependent on each
11 other.

12 Q. Okay. Let me just carry it one
13 step further then, you know, we do have this legal
14 expression, piercing the corporate veil. Would you
15 say you were piercing the corporate veil in order --
16 in order to combine the companies?

17 A. Well, I'm going to say no and we
18 discussed this and the reason why is because we
19 determined or at least we were -- that was our
20 decision is to hold both of these companies as the
21 club. We could not distinguish sales or transactions
22 from one as opposed to the other. It was co-mingled.
23 It was unclear. We got conflicting information, a
24 lot of crossover, so we could not clearly determine
25 it. So to us it was all one company, one -- one

800.523.7887

Associated Reporters Int'l., Inc.

Page 124

1 Metro Enterprises/John Scarfi - 7-15-19
2 establishment and all the sales under that roof were
3 -- was what we looked at.

4 Q. Right. And I'm reading from the
5 M.L.B. audit report. So are you saying you merged
6 them in a way so to speak Metro into M.L.B. or that
7 from an operational point of view, you view Metro as
8 part of M.L.B. or how would you describe it?

9 A. Well, we didn't merge anything.
10 Upon the review we could not clearly, really clearly,
11 distinguish the sales from one to the other because I
12 did see transactions in what was provided to me for
13 one entity and then I would see it for the other and
14 it was not really clear. Employees working for both
15 companies being paid by both companies. It was -- it
16 was not a clear cut, you know, definition.

17 Q. When you did the audit did you --
18 and I've heard this word from a number of witnesses
19 today, did you think of Metro as making sales of
20 script as opposed to as Mr. Scarfi testified
21 processing the credit card?

22 A. We -- we took it as he was
23 selling script.

24 MR. BOBROW: I have no other
25 questions.

800.523.7887

Associated Reporters Int'l., Inc.

Page 125

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Thank you. Mr. Jack,
3 any redirect at this point?

4 MR. JACK: Sure, Judge.

5 REDIRECT EXAMINATION

6 BY MR. JACK:

7 Q. When you -- when you testified
8 earlier today, you testified regarding the conduct of
9 the audit for the -- for the various entities,
10 M.L.B., 44th and specifically Lace and Stiletto. I'm
11 going to show you for -- Judge, if I can, can I
12 present for identification the audit files for
13 Stiletto Entertainment L.L.C. --

14 A.L.J. RUSSO: Yes.

15 MR. JACK: -- as Exhibit --

16 A.L.J. RUSSO: I think we're at N at
17 this point. N.

18 MR. JACK: N?

19 A.L.J. RUSSO: N as in Nancy.

20 MR. BOBROW: Objection, Your Honor. I
21 don't believe this was part of Mr. Jack's hearing
22 memo and I have not had the opportunity to review
23 these documents.

24 MR. JACK: I'm not offering it into
25 evidence. I'm just offering it for identification

800.523.7887

Associated Reporters Int'l., Inc.

Page 126

1 Metro Enterprises/John Scarfi - 7-15-19
2 and ask a few questions. And I ask a little bit of
3 leeway to be able to do that so that we can try to
4 unravel some of -- what's here before us and as your
5 witness just testified on cross and there appears --
6 appear to have been some confusions with the audit as
7 to what entity was doing -- performing what functions
8 as Mr. Scarfi himself testified.

9 It wasn't even clear from his
10 testimony who is doing what. I mean a machine broke,
11 does everybody use the machine for the entity that
12 was there. Your witness testified about receiving
13 envelopes with documents from -- from all of the
14 entities in one envelope which in fact is what lead
15 to the audit of Metro Enterprises Corporation.

16 So it's not unreasonable, I don't
17 think, to be able to ask the auditor a few questions
18 about Stiletto.

19 A.L.J. RUSSO: Right now you're not
20 offering it into the testimony or just into evidence,
21 you want me to mark it as evidence?

22 MR. JACK: I'm just going to ask you
23 to identify it.

24 A.L.J. RUSSO: Okay. But so when he
25 offers, make -- raise your objection then, please, if

800.523.7887

Associated Reporters Int'l., Inc.

Page 127

1 Metro Enterprises/John Scarfi - 7-15-19

2 he offers it.

3 BY MR. JACK: (Cont'g.)

4 Q. So going back to Stiletto, you
5 testified earlier today that you conducted an audit
6 of Stiletto LLC. Is that correct?

7 A. Yes, yes.

8 Q. And do you know who conducted
9 that audit?

10 A. It was the auditor -- it was not
11 Jenifer, it was Crystal Ricks.

12 Q. And do you supervise Crystal
13 Ricks?

14 A. I -- I did at the time.

15 Q. So were you involved in the
16 conduct of this audit similar to the way you were
17 involved in a M.L.B. in 44 --

18 A. Yes, I --

19 Q. -- audit?

20 A. Yes, I was.

21 Q. And you testified earlier that
22 you are uncertain as to whether or not the records
23 provided were adequate. If you were to take a look
24 at the -- the audit file that's in front of you,
25 would you be able to confirm one way or the other

800.523.7887

Associated Reporters Int'l., Inc.

Page 128

1 Metro Enterprises/John Scarfi - 7-15-19

2 whether the division made a determination with
3 regards to the records?

4 A. Yes.

5 MR. BOBROW: Objection, Your Honor.

6 My concern here is that when I look at the audit
7 report, I see the name Glenn Oricchio. Glenn
8 Oricchio was the witness we subpoenaed which couldn't
9 appear today because of his obligation in the
10 bankruptcy court in Florida. So I don't have my
11 witness to address this audit report and I think that
12 is a distinct disadvantage.

13 MR. JACK: Judge --.

14 MR. BOBROW: Your Honor, I want to --
15 I want to say something else if I may. I tried many
16 times to request Mr. Jack to meet with me to work on
17 stipulations, he did not return my phone calls, he
18 did not meet with me to do stipulations as is
19 required under the rules of the tribunal and a lot of
20 this could have been cleared up and this whole
21 hearing could have proceeded in a much more efficient
22 way if the office of Counsel had met with me to do
23 stipulations.

24 MR. JACK: Sure he didn't direct me to
25 meet with Mr. Bobrow but in any event I would have

800.523.7887

Associated Reporters Int'l., Inc.

Page 129

1 Metro Enterprises/John Scarfi - 7-15-19

2 glad to work on -- on stipulations if you had sent me
3 a proposed stipulations -- stipulation of facts but
4 that --.

5 MR. BOBROW: I asked you for a
6 meeting. On July 20, in my letter I said we had a
7 meeting schedule, you cancelled the meeting and I
8 called you said let's reschedule it and I didn't hear
9 a single word from you after that. And stipulations
10 are required.

11 MR. JACK: Yes, meet -- but -- but
12 anyway that's -- that's beside the point. I would
13 have gladly moved to proposed stipulation of facts
14 and see if there was anything that we can stipulate
15 but that didn't happen, Judge. So the question is
16 whether or not the witness can answer the question
17 which I think is a relevant question to determine
18 whether or not the division was able to determine or
19 whether or not the division made any notes regarding
20 the adequacy of the books and records provided by one
21 of the entities that would consist -- that resulted
22 in -- in the assessment that was issued against Metro
23 Enterprises Corporation.

24 MR. BOBROW: It's like an affidavit
25 without giving me the opportunity to question the

800.523.7887

Associated Reporters Int'l., Inc.

Page 130

1 Metro Enterprises/John Scarfi - 7-15-19

2 person that did the affidavit.

3 A.L.J. RUSSO: It's not -- it's not an
4 affidavit. The -- the witness is here and you can
5 cross examine her if -- if Mr. Jack does move to have
6 any put into the record. If it was something that
7 wasn't included in the hearing memo which I -- I
8 don't have in front of me at the moment. If it
9 wasn't included in the hearing memo, then I'll give
10 you additional time if you request it after the
11 hearing to submit an affidavit from mister --

12 MR. JACK: Oricchio.

13 A.L.J. RUSSO: -- Mr. Oricchio in --
14 in regard to that that.

15 MR. JACK: And I would also hope you
16 give the appropriate weight to the testimony.

17 A.L.J. RUSSO: To the extent
18 necessary, yes.

19 MR. JACK: Thank you.

20 A.L.J. RUSSO: But I -- I will allow
21 the question. If you could read it back because I'm
22 sure at this point you've forgotten the question.

23 (Off the record discussion)

24 BY MR. JACK: (Cont'g.)

25 Q. The books and records provided by

800.523.7887

Associated Reporters Int'l., Inc.

Page 131

1 Metro Enterprises/John Scarfi - 7-15-19

2 Stiletto were adequate?

3 A. Yes.

4 Q. And what was the conclusion?

5 A. The conclusion was they were not

6 adequate.

7 Q. And what was the period covered

8 by the audit of -- of Stiletto?

9 A. The audit period was September
10 1st of '13 through February 28th of '14.

11 Q. And when you requested books and
12 records, did you request books and records for that
13 entire period?

14 A. Yes.

15 Q. Did you receive books and records
16 for that entire period?

17 A. No.

18 Q. Okay. And at this time and I'm
19 not going to offer into evidence --

20 A.L.J. RUSSO: You're not offering it
21 into evidence --

22 MR. JACK: No.

23 A.L.J. RUSSO: -- and take -- yes,
24 take it back and I'll just --.

25 MR. JACK: And the division would

800.523.7887

Associated Reporters Int'l., Inc.

Page 132

1 Metro Enterprises/John Scarfi - 7-15-19

2 offer for identification as N again.

3 A.L.J. RUSSO: We'll call it O since I
4 have already marked N.

5 MR. JACK: Okay.

6 A.L.J. RUSSO: And we're just going to
7 skip N.

8 MR. BOBROW: Your Honor, I have the
9 same objection.

10 A.L.J. RUSSO: He hasn't -- he hasn't
11 offered it yet. So if you could --

12 MR. BOBROW: Okay.

13 A.L.J. RUSSO: -- just hold off until
14 he actually offers it into evidence.

15 So I will mark for identification
16 purposes Exhibit O.

17 MR. JACK: And even with the
18 objections.

19 A.L.J. RUSSO: Well, you haven't
20 offered it yet so unless you're offering it --.

21 MR. JACK: And -- well, I'm not
22 offering it to evidence -- I'm offering -- offered it
23 for identification and I'm going to ask same
24 questions basically.

25 A.L.J. RUSSO: Right. So ask your

800.523.7887

Associated Reporters Int'l., Inc.

Page 133

1 Metro Enterprises/John Scarfi - 7-15-19

2 question and if he objects to your question then

3 we'll rule at that point.

4 BY MR. JACK: (Cont'g.)

5 Q. Christine, can you tell us when

6 you conducted the audit of Lace?

7 A. This was also Cristal Ricks.

8 Q. And were you Cristal Ricks'

9 supervisor?

10 A. Yes.

11 Q. And did the division request book

12 and records from Lace?

13 A. Yes.

14 Q. Did they -- did the division

15 receive adequate books and records from Lace to

16 determine if the tax reported by Lace for the audit

17 period was accurate?

18 A. No.

19 Q. Did you request books and records

20 from Lace?

21 A. Yes.

22 Q. And received books and records?

23 A. Yes.

24 Q. Okay. And so did they make a

25 determination as to whether or not the books and

800.523.7887

Associated Reporters Int'l., Inc.

Page 134

1 Metro Enterprises/John Scarfi - 7-15-19

2 records were adequate?

3 A. Yes.

4 Q. And were they?

5 A. No.

6 MR. JACK: Okay. Again, Judge, I'm
7 not going to offer the following into evidence. So
8 if I can just --.

9 A.L.J. RUSSO: Yeah. You can just
10 take it back and we will just skip O.

11 BY MR. JACK: (Cont'g.)

12 Q. And let me just ask you some
13 questions regarding the audit. When -- when -- well,
14 the audits in general, were either Cris -- Cristal
15 Rick's or Ms. Genovese would conduct these audits
16 did you accompany -- accompany to the field?

17 A. Yes.

18 Q. And when they met with the
19 taxpayer or the taxpayer's representative?

20 A. Yes.

21 Q. When you went -- and you
22 testified earlier that you actually visited -- I
23 don't know -- some of the establishments. Did you
24 visit the establishment? Which one did you visit if
25 so?

800.523.7887

Associated Reporters Int'l., Inc.

Page 135

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. I visited M.L.B., 44th and I'm
3 not sure if it was Lace or Stiletto. It was only one
4 of them.

5 Q. And did you come across any
6 information on those visit that indicated what
7 patrons were charged for when they purchased the --

8 A. Yeah. So --

9 Q. -- the script?

10 A. -- early on in the audit of
11 M.L.B. and 44th, Jennifer and I had a tour of M.L.B.
12 and 44th by Mr. Capeci and we got a lot of
13 information that day as far as the operations. So
14 what we were told that day was that there is a
15 separate register in the front for door admission
16 which did not go into the point of sale system.
17 There was a point of sale system for our drinks for
18 -- actually, I think also at the front it might have
19 been coat check and admissions. I think that was
20 separate. There was a P.O.S., point of sale, for the
21 bar and for room rentals and that was what went into
22 the point of sale.

23 We were also told that in addition to
24 that that there is a credit card machine for the
25 processing of the purchases of scripts for dancers.

800.523.7887

Associated Reporters Int'l., Inc.

Page 136

1 Metro Enterprises/John Scarfi - 7-15-19

2 And that's when we were told it was run by a
3 different company. We were told that somebody who
4 goes in wants a private dance in a room would get two
5 charges. They would get two separate credit card
6 charges and literally sign two separate credit card
7 receipts. One would be for the room and one is for
8 the dancer.

9 In exchange, whatever amounts of funny
10 money or script that they purchase they would
11 actually get monopoly money, funny money. They would
12 actually get in denominations of twenty dollars and
13 they would actually get that and they were able to go
14 and give it to this girl, give it to that girl,
15 whatever they chose and if they needed to buy more
16 they could buy more down the road.

17 We had asked the manager there for the
18 cost of these things and my memory -- I'm not going
19 to be able to remember the dollar amount but I know
20 that the dollar amount varied depending on the amount
21 of time in a room and the amount of -- and the type
22 of room. Some rooms were bigger means more money.
23 Of course more time is more money and then the girls
24 would be according to -- to that. So if it was a
25 girl for fifteen minutes there would be a price. If

800.523.7887

Associated Reporters Int'l., Inc.

Page 137

1 Metro Enterprises/John Scarfi - 7-15-19
2 there was a girl for half hour there would be a
3 price. Also, what we were told at that time was that
4 all the entertainer were considered tenants. We were
5 never told about employees or -- or anything else.
6 We were told -- and we were told absolutely they're
7 not independent contractors. But we were told they
8 were tenants and each girl had a contract with the
9 club as a tenant and a landlord.

10 She would agree to pay a certain
11 amount of rent every day when she would work for her
12 -- for them allowing her to work there. And that was
13 also was a schedule. If she came in at, you know,
14 noon, it was one dollar amount but if she came in and
15 midnight it was a much higher amount. So that's what
16 we were given and I do believe we also got copies of
17 these -- I don't know where they are but they're
18 somewhere, of these charges because they were up like
19 on the wall in the office. So we did get copies of
20 those things.

21 MR. JACK: Okay. I have no further
22 questions, Judge. Thank you.

23 A.L.J. RUSSO: Thank you. Any further
24 cross Mr. Bobrow?

25 MR. BOBROW: Yes, Your Honor.

800.523.7887

Associated Reporters Int'l., Inc.

Page 138

1 Metro Enterprises/John Scarfi - 7-15-19

2 RECROSS EXAMINATION

3 BY MR. BOBROW:

4 Q. Let me get this out of the way.

5 Do you recall if there was an opening or a future
6 audit appointment between your office and --?

7 A. I do not know -- no, I'm not -- I
8 don't -- I'm not sure.

9 Q. Thank you. And that goes to the
10 question of cooperation whether there were more
11 documents to give. Okay. So you don't recall.

12 A. Yeah. I really don't.

13 Q. Okay. I believe you said that
14 there was some employees that were helping the club
15 and sometimes the employees would help Metro. Can
16 you name any of those employees that worked for both
17 Metro and the club?

18 A. There is only one name that
19 really stands out in my head and I know that
20 somewhere I wrote down a lot of names but the one
21 name in my head I remember and I don't think it was
22 M.L.B. though, I think it was 44th, a girl name
23 Alisha Holland where I clearly saw her on the nine
24 forty-one so the, you know, the forms for withholding
25 for the club for 44th Enterprises but I also saw

800.523.7887

Associated Reporters Int'l., Inc.

Page 139

1 Metro Enterprises/John Scarfi - 7-15-19

2 checks going to her from Metro.

3 So we had questioned Mr. Scarfi or
4 perhaps a prior power of attorney about that and he
5 did say that that was tips and I asked him about why
6 did he pay the club and he said it was tips that
7 people would leave and I said, well, how would you
8 keep track of that and he told me that they keep
9 track of it and because they know how much that
10 they're entitled to and that that's -- so there was
11 no, you know, recording of it but that's what we were
12 told but I did see checks and that's the only name I
13 can independently remember.

14 Q. Do you remember the title, the
15 job function, of this person?

16 A. No. I -- she was -- I was also
17 told that she had the ability to go to his bank and
18 withdraw money to bring it because she lives close by
19 or something, to bring it to the club and deposit it
20 in the safe.

21 Q. Do you recall if this person was
22 a manager of the club?

23 A. I don't recall. I don't know.

24 Q. You also just a little while ago,
25 earlier from me -- let me read back. I believe you

800.523.7887

Associated Reporters Int'l., Inc.

Page 140

1 Metro Enterprises/John Scarfi - 7-15-19
2 said -- you said you couldn't determine how Metro and
3 the club function. So it was the auditors decision
4 based on the lack of clarity to basically combine
5 them. Can you explain what you mean by a lack of
6 clarity?

7 A. We could not independently
8 determine that Metro's sole function was the credit
9 card processing for the sale of script and that the
10 club's sole function was the selling of, you know,
11 liquor and -- and the rooms. It seemed that it was
12 sometimes the lines were skewed. So that's why we
13 assessed it the way we did.

14 Q. You know, we were talking today
15 about, you know, general treatment of funny money and
16 script. And what position the audit division has
17 with respect to these -- is that policy that the
18 audit division has that all scripts is subject to
19 sales tax?

20 MR. JACK: Objection, Judge, supposes
21 facts that are not in evidence. There is no fact --
22 there is no evidence that the division has a policy
23 that all script sale was subject to tax.

24 MR. BOBROW: That policy is in the
25 audit -- there is language to that effect and there

800.523.7887

Associated Reporters Int'l., Inc.

Page 141

1 Metro Enterprises/John Scarfi - 7-15-19
2 was -- correct me if I'm wrong, that there were
3 discussions with people and fans, there were
4 discussions with the Office of counsel and they told
5 you, please correct me, that there was a policy that
6 is taxable and that you should go ahead and assess.

7 THE WITNESS: Okay.

8 A.L.J. RUSSO: I'm going to ask you
9 just to re -- rephrase the question please.

10 BY MR. BOBROW: (Cont'g.)

11 Q. Did people and office of counsel
12 or any other part of the department tell you to
13 assess because that was their policy?

14 A. I believe what was discussed and
15 what the decision was that we were going to hold the
16 receipts of the sale of script as taxable as
17 admissions to a place of amusement.

18 Q. And to the best of your
19 knowledge, is that a general policy in the department
20 with other clubs and --?

21 A. My experience, I don't know,
22 other than my own experience.

23 Q. What is your own experience
24 because you and I are running audit today, we -- we
25 do a lot of these audits --

800.523.7887

Associated Reporters Int'l., Inc.

Page 142

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. I'm not supposed to talk about
3 that.

4 Q. Okay.

5 A. Sorry.

6 Q. So what is your experience with
7 the club?

8 A. My experience and also from
9 reading prior court decisions that the department
10 holds the sale of script as taxable as admission to a
11 place of amusement. So that policy is in place. The
12 policy doesn't specifically say the sale of script is
13 taxable but we consider that admission to -- you have
14 to buy that to be admitted.

15 Q. And then I guess after that what
16 would follow is the admission of taxable --?

17 A. Yes.

18 Q. Is there -- is there any reason
19 that -- that you know of that where the department is
20 not services?

21 MR. JACK: Objection, Judge.

22 MR. BOBROW: Thank you, Your Honor, I
23 have no questions.

24 A.L.J. RUSSO: Sustain that. Mr.
25 Jack, anything further for this witness.

800.523.7887

Associated Reporters Int'l., Inc.

Page 143

1 Metro Enterprises/John Scarfi - 7-15-19

2 MR. JACK: No, Judge.

3 A.L.J. RUSSO: Thank you, you're
4 excused. Mr. Bobrow, your next witness.

5 MR. BOBROW: I'd like to call Tony
6 Capeci.

7 A.L.J. RUSSO: Okay. Mr. Capeci, if
8 you could please take the stand. And please raise
9 your right hand. Do you swear or affirm to tell the
10 truth, the whole truth and nothing but the truth?

11 MR. CAPECI: I do.

12 THE WITNESS; ANTHONY CAPECI; Sworn

13 A.L.J. RUSSO: Okay. You may proceed.

14 THE REPORTER: Sir, can you just spell
15 for me? Your last name?

16 THE WITNESS: C-A-P-E-C-I.

17 THE REPORTER: Thank you.

18 THE WITNESS: Anthony, first name.

19 A.L.J. RUSSO: Marked for
20 identification petitioner's Exhibit Four. Go ahead.

21 MR. JACK: Judge, before any questions
22 get asked I just want to figure out how this witness
23 can identify this document, I mean, I don't see his
24 name anywhere in it and --.

25 MR. BOBROW: You could ask it.

800.523.7887

Associated Reporters Int'l., Inc.

Page 144

1 Metro Enterprises/John Scarfi - 7-15-19

2 A.L.J. RUSSO: Mr. Bobrow, you're
3 going to lay the foundation for this?

4 MR. BOBROW: Yes, sure.

5 THE WITNESS: My name is on it, right
6 there, third line. That'd be me.

7 MR. BOBROW: That's you?

8 THE WITNESS: Yeah, me.

9 DIRECT EXAMINATION

10 BY MR. BOBROW:

11 Q. Tony, can you explain to us what
12 you know about this document? How it came about and
13 what it stands for? And why were you involved with
14 this document?

15 A. Okay. The -- the broad issue or
16 broad question here is I am the owner of M.L.B.
17 Enterprises and 44th Enterprises. I was the owner of
18 West Point Enterprises for a brief period of time.

19 Q. Predecessor of?

20 A. Not a predecessor.

21 Q. Okay.

22 A. Different club located on 28th
23 Street. I'm a C.P.A. by practice. So I know quite a
24 bit of the book keeping, tax issues, the
25 correspondence, all of this and at various times the

800.523.7887

Associated Reporters Int'l., Inc.

Page 145

1 Metro Enterprises/John Scarfi - 7-15-19
2 various entities that I owned have been audited by
3 New York State Sales Tax. This letter goes back when
4 the original audit of West 20th Street -- okay.

5 Let's start at the very beginning. In
6 the very beginning, the tax department audited a club
7 called Paradise where they received a large
8 assessment. After that they audited the predecessor
9 owner of West 20th which was a convoluted story which
10 we don't need to go into now but we call it the
11 Marcelo case because Marcelo was audited, then they
12 audited West 20th. And then when they audited West
13 20th because I was the owner of M.L.B. and 44th they
14 audited those two entities. When they originally
15 audited West 20th, we engaged Mr. Bobrow as our
16 attorney at the time and he arranged for a meeting in
17 Albany with Joe Carzo and a bunch of other people
18 whose names I don't remember at the time. But they
19 were represented by the Office of Counsel at that
20 meeting and it was me, Mr. Bobrow and Mark Kline
21 client from Hodgson Russ was representing the club
22 and at this meeting we discussed the issue of
23 dancers. And were dancers taxable or non-taxable.

24 At that meeting I gave my classic
25 example, a customer walks in off the street. It's

800.523.7887

Associated Reporters Int'l., Inc.

Page 146

1 Metro Enterprises/John Scarfi - 7-15-19
2 during the day, there is no admission charge. Sit
3 downs, a dancer walks up to him. He hands her twenty
4 dollars whether or not she does a dance or not. He
5 then gets up and leave. The discussion we had up in
6 Albany at that point was -- and I was grilled by a
7 number of State representatives. We got a -- but
8 none of them could come up with an explanation why
9 that would be a sales taxable transaction. They --
10 this whole issue of script, non-script became was
11 moot because everybody agreed at that meeting the
12 method of payment cannot affect taxability. So if a
13 dancer is paid by credit card, cash, G.N.H., green
14 stamps, whatever, it doesn't affect taxability. The
15 only thing, if the nature of the transactions is
16 taxable, it's taxable no matter how it's paid for.
17 How it is paid for can never determine if it's
18 taxable or not.

19 Based on that meeting three days later
20 or so Mr. Bobrow got a phone call from Joe Carzo, who
21 I think was the head of New York State Sales Tax at
22 the time, explaining to him that the determination by
23 the department was that if our facts and
24 circumstances agreed with what I described at the
25 meeting that they would hold that the dancers were

800.523.7887

Associated Reporters Int'l., Inc.

Page 147

1 Metro Enterprises/John Scarfi - 7-15-19
2 not taxable. During all this -- course of all of
3 this and administrative procedures that were done
4 correctly and incorrectly, I wind up with a four
5 million dollar assessment for sales tax on dancers.
6 The two auditors at the time, Alton Plunkett and Mike
7 Macalusio from the Brooklyn office, they did what --
8 exactly what they were ordered to do by Joe Carzo
9 which was doing audit of the facts and circumstances,
10 did the clubs operate the way that we described at
11 the meeting. They determined that they did and
12 eventually through much trial and tribulation they
13 cancelled the four million dollar assessment in full.

14 We agree to a few other small issues
15 on the audit but the dancers were never taxed at that
16 audit. We went to a B.C.M.S. Conference for that
17 audit. Alton Plunkett, the auditor at the time
18 testified at the audit, at the B.C.M.S. Conference I
19 should say, that the dancers were non-taxable. Also
20 during this time the previous owner of West 20th
21 Street went to trial. It was a responsible party
22 case but during that case they asked Mr. Plunkett on
23 the stand, were dancers taxable. He said no. Nobody
24 objected. The -- so basically, this letter was
25 generated at some point during this whole period of

800.523.7887

Associated Reporters Int'l., Inc.

Page 148

1 Metro Enterprises/John Scarfi - 7-15-19
2 arguing about whether or not dancers would be held
3 taxable or not and it was from Nonie Manian, who was
4 the head of New York State at the time, or from Carla
5 Vassari on behalf of Nonie Manian stating that if,
6 again, the story that we gave at the original meeting
7 with Joe Carzo was true that dancers are not taxable.

8 So part of the relevance of this to
9 today is that they never told me that dancers were
10 taxable and I don't understand frankly how the tax
11 department could tell me during the period that which
12 they are assessing now don't collect sales tax and
13 then they audit that period and said, oh, you should
14 have collected sales tax. It doesn't make -- I think
15 it's a constitutional violation but I'm not a
16 constitutional lawyer so I don't want to raise that
17 but I believe it's a violation of my constitutional
18 rights that they can't tell me and it's not a rumor
19 they cancelled the four million dollar assessment.
20 So I know for a fact that the dancers were not
21 taxable. They would've tried to collect the four
22 million dollars.

23 So at some point -- if you want me to
24 go on, it's a long, long story here. The State then
25 audited the second period. They guaranteed us that

800.523.7887

Associated Reporters Int'l., Inc.

Page 149

1 Metro Enterprises/John Scarfi - 7-15-19
2 they would never audit us again and three months
3 after we got the closing letter on the first order
4 which took a very long time to get, they audited us a
5 second period. When they started the audit of the
6 second period, Ms. Scala and Ms. Genovese came to my
7 office and I said, oh, by the way we have this
8 agreement with the State the dancers are not taxable.
9 And they both say we know nothing about it. Nobody
10 told us anything about that. So I said okay. I
11 called up first Mr. Scarpacci, then from him I got
12 back to Joe Carzo and we had a very long phone
13 conversation which I documented in a series of
14 letters because the State would never answer me in
15 writing. They would talk to me on the phone but they
16 would never put anything in writing for some strange
17 reason. They -- we came to an agreement then with
18 Mr. Carzo and Mr. Vanderlin --

19 Q. Vanderlin.

20 A. -- Vanderlin, who is his
21 underling that they actually stopped work on the
22 audit for a year. Nothing happened while they tried
23 to come to a decision about the dance issue because I
24 kept saying to them you told me that dancers were not
25 taxable. I read the law, I haven't seen a law

800.523.7887

Associated Reporters Int'l., Inc.

Page 150

1 Metro Enterprises/John Scarfi - 7-15-19
2 change. Why -- how do they suddenly become taxable?
3 And they couldn't give me an answer for a year. They
4 finally call me up and said this case is getting old,
5 as an accommodation would you allow us to come back
6 in and finish the audit. So I said yes but when it
7 comes to the issue of the dancers I want to have a
8 sit down meeting in Albany with Office of Counsel and
9 those in-charge because it's way above the pay level
10 of the field auditor because this was decided in
11 Albany way back when and they said okay before they
12 come to a conclusion on the dancers we will give you
13 the Courtesy of a meeting in Albany.

14 The meeting never occurred. In the
15 midst of the audit we still have open audit at this
16 point on the audit. They issued notices of
17 determination. Why, I never found out. But it was
18 in the middle of it. They never gave me an
19 explanation as to why they decided the dancers were
20 taxable or not. Again, they never were able to give
21 me a reasonable explanation as to why dancers paid in
22 cash and dancers paid not by cash are treated
23 differently. It's the same dance.

24 Q. Tell me between the other
25 entities we were talking about today, which were --

800.523.7887

Associated Reporters Int'l., Inc.

Page 151

1 Metro Enterprises/John Scarfi - 7-15-19
2 which are M.L.B., Metro, Lace, 44th what -- for the
3 record could -- what are your -- what is your
4 ownership interest or were you an officer, an
5 employee of any of these companies? Could you
6 clarify that?

7 A. I was an owner and officer of
8 M.L.B. Enterprises and 44th Enterprises only. To the
9 best of my knowledge John Scarfi is the sole owner
10 and officer of Metro Enterprises and Glen Oricchio is
11 the owner and officer of Stiletto and Lace but I
12 don't remember the -- their corporate names.

13 Q. So this morning before we broke
14 for lunch, Mr. -- Mr. Jack put into evidence a lot of
15 documents and when we looked at them some of them
16 were the cancelled checks. This was Metro cancelled
17 checks, bank statements, journal entries, did you
18 want to clarify anything about those?

19 A. Yes, during the course of the
20 audit -- okay. Back up two steps. You have to
21 remember that not only am I the owner of the clubs,
22 I'm also a practicing C.P.A. and I've also known Mr.
23 Scarfi for about twenty-five years. So the
24 relationship is he -- I did his personal taxes for
25 maybe twenty of those years. So it was client

800.523.7887

Associated Reporters Int'l., Inc.

Page 152

1 Metro Enterprises/John Scarfi - 7-15-19
2 professional as well as friendship and for a number
3 of my clients, not just Mr. Scarfi and not just in
4 the cabaret businesses but other businesses, I've
5 been a signatory on bank accounts, mainly in the
6 events that somebody gets hit by a bus, God forbid,
7 and checks need to be cut immediately and the owner
8 is not around.

9 I'm a, if I say so myself, a fairly
10 trusted professional. A lot of these clients I've
11 known for forty years. It's not unrealistic, they
12 need somebody they could trust to be who is around,
13 who is able to sign the check. So in the stack of
14 documents that Mr. Jack provided you before there are
15 some checks on Metro's behalf where -- oh, well, no,
16 and I've notified Ms. Scala and Ms. Genovese at the
17 audit level that I believed that I was the signatory
18 at some point for Metro for that exact reason, that
19 in the event of an emergency I could sign a check.

20 So there are few employee checks in
21 that stack of documents that was signed by me but
22 most of those were, I lost my check, I need my money,
23 John is not around, can you sign a check, I never
24 signed a check to withdraw money from the bank.

25 I never signed a check for my own

800.523.7887

Associated Reporters Int'l., Inc.

Page 153

1 Metro Enterprises/John Scarfi - 7-15-19
2 benefit anything that I did was merely an
3 accommodation not as a co-vendor or responsible party
4 but as a friend of John's to sign checks in his
5 absence and from my understanding of the law and,
6 again, I'm a CPA, the difference between signing a
7 check and being a co-vendor is basically night and
8 day.

9 There are strict definitions in the
10 law as to what a co-vendor is and what a co-vendor
11 isn't and the arbitrary act of signing a check in no
12 way makes you a co-vendor or a responsible party.

13 Now, Ms. Scala just testified that
14 they made some determination based on thin air, she
15 didn't quote any law sections that I heard that we
16 were co-vendors and it's one enterprise and getting
17 back to that she also stated that the books and
18 records are not separate, they are completely
19 separate. Metro money doesn't go into M.L.B.'s,
20 Stiletto, Lace, 44th and Stiletto, Lace, 44th and
21 M.L.B. money does not go into Metro. So I don't
22 understand her discussion stating that the -- and you
23 -- they give us the bank statements. There is no co-
24 mingling of accounts.

25 Q. How do you know that? Were you

800.523.7887

Associated Reporters Int'l., Inc.

Page 154

1 Metro Enterprises/John Scarfi - 7-15-19

2 -- and are you the C.P.A. --?

3 A. Well, I'm a C.P.A. -- well, I'm
4 the owner of M.L.B. and 44th so I know that their
5 money was distinct. While I wasn't the accountant
6 for Metro, I've known John a long time and I was
7 influential and instrumental in setting it up so that
8 I know how the companies work. I've intimate
9 knowledge and through the audit they know the same
10 thing that I'm telling you. They saw the bank
11 statements where his credit cards terminals were
12 hooked up to his bank accounts. Again, as John
13 testified earlier there was a brief period where and
14 I don't remember which way it went, him to me or me
15 to him, one of the terminals was out so we used the
16 other guy's terminal for a period of time and --

17 Q. What was the --

18 A. -- once the terminal --

19 Q. -- what was the period of time
20 you --

21 A. I don't -- I don't remember.

22 Q. Okay.

23 A. Listen, it's all foggy back
24 there, but there was a period time when we co-mingle
25 the terminals for brief period of time as an

800.523.7887

Associated Reporters Int'l., Inc.

Page 155

1 Metro Enterprises/John Scarfi - 7-15-19
2 accommodation between two separate business owners.
3 It's no different than two stores next door to each
4 other. Hey, my card -- restaurants do it all the
5 time. My credit card terminal is down, can I run
6 them on your machine. You keep a list of the charges
7 and you give them the money. It is a standard
8 business practice in the real world but it did, like
9 I say, it does not create a co-vendor situation any
10 way, shape or form.

11 Q. One of the exhibits I asked John
12 to look at today was the no change letter for Pacific
13 Holdings. What do you know of that? That -- were
14 you involved in that or were you --?

15 A. Yes, again, that was the audits
16 that came out of -- the original was forty -- West
17 20th Street audit that then became an M.L.B. audit
18 and 44th audit and we handled them at the same time.

19 You were the representative ultimately
20 for Pacific Club Services which was the predecessor
21 entity to Metro. I handled 44th and M.L.B.

22 Essentially, what happened there was
23 it dragged on forever, the State, like I said before,
24 assessed me four million dollars for sales tax on
25 dancers.

800.523.7887

Associated Reporters Int'l., Inc.

Page 156

1 Metro Enterprises/John Scarfi - 7-15-19

2 They ultimately came to believe based
3 on Alton Plunkett's and Mike Macalusio's audit
4 findings that, no, the dances were not taxable. We
5 settled on a fifty thousand dollar payment from
6 M.L.B. and a twenty-five thousand dollar payment from
7 44th because this audit had gone on for five years
8 and they wanted something to show their bosses that
9 they didn't waste time. So we agreed to that but if
10 you read the audit, it doesn't state what was
11 taxable, wa -- wa-- what the deficiency was, it's
12 just they came out with an assessment for fifty and
13 twenty-five, we paid them. They released the four
14 million dollar sales tax assessment.

15 Q. Was it -- what was your
16 understanding upon getting that no change letter for
17 the operation --?

18 A. The -- the understanding was
19 exactly what we had said up in Albany three or four
20 years before that the manner in which the clubs will
21 run under our facts and circumstances, dances were
22 not taxable and during the course of this audit I re-
23 contacted Joe Carzo and a bunch of other people. Mr.
24 Osborne refused -- Mr. Jack I should say refused to
25 get on the phone but I know he was involved. They

800.523.7887

Associated Reporters Int'l., Inc.

Page 157

1 Metro Enterprises/John Scarfi - 7-15-19

2 would only talk to me on the phone, they wouldn't put
3 anything in writing and I kept asking them, what
4 changed?

5 Why are you saying now dancers are
6 taxable and then they started to use audit reports
7 that came out after my audit period. So how was I to
8 know? Pick a year, 2015, that dances were taxable.
9 If there is a Court decision in 2016 that said they
10 were when I had it in writing from the State that
11 they weren't.

12 Q. Uh-huh, okay. Thank you.

13 A.L.J. RUSSO: I'm sorry.

14 MR. BOBROW: I'm finished with direct.

15 A.L.J. RUSSO: Okay. You have now
16 moved --.

17 MR. BOBROW: Okay. Wait -- wait --
18 wait -- wait, excuse me.

19 MR. JACK: You didn't move --.

20 A.L.J. RUSSO: You haven't moved
21 Exhibit Four into the record yet. Did you want to do
22 that?

23 MR. BOBROW: I couldn't hear you,
24 Judge.

25 A.L.J. RUSSO: You haven't moved

800.523.7887

Associated Reporters Int'l., Inc.

Page 158

1 Metro Enterprises/John Scarfi - 7-15-19

2 Exhibit Four into the record. Did you want to admit
3 that?

4 MR. BOBROW: Four being the letter,
5 I'm sorry.

6 A.L.J. RUSSO: The letter -- the
7 December 24th --.

8 MR. BOBROW: I would like to -- Mr.
9 Capeci's name is in the letter.

10 A.L.J. RUSSO: Mr. Jack, any
11 objections to that?

12 MR. JACK: I have no objections,
13 Judge.

14 A.L.J. RUSSO: Okay. I'll accept
15 petitioner's Exhibits Four into the record. And you
16 did have more questions or --

17 MR. BOBROW: Yes.

18 A.L.J. RUSSO: Okay.

19 BY MR. BOBROW: (Cont'g.)

20 Q. Because -- again, because Glenn
21 Oricchio is not here, I just went to put on the
22 record, to the best of your knowledge, does his clubs
23 differ from your clubs or could you helps us
24 understand what his -- how his clubs operate because
25 he is not here?

800.523.7887

Associated Reporters Int'l., Inc.

Page 159

1 Metro Enterprises/John Scarfi - 7-15-19

2 A. Again, as a professional I've
3 done work for Glenn over the years, various matters.
4 Yeah, right. I might've done sales tax for him years
5 ago. So I am quite knowledgeable about the way that
6 he was running the clubs at that time but then things
7 could change. But similar -- he ran the clubs very
8 similar to the way that I ran my clubs and the
9 relationship between Metro Enterprises and his two
10 clubs were similar if not exactly the same as the way
11 that I ran my clubs.

12 Q. Are you familiar with the Third
13 Department decision in April?

14 A. Yes, we have an issue before the
15 Third Department and they came back and they stated
16 that the issue of whether dances -- the dance tips --
17 the script is taxable or not should be made on a
18 factual basis on an individual case -- case by case
19 basis based on the facts and circumstances of that
20 case that there should not be a broad swath that, oh,
21 it's script it's taxable. It depends on the facts
22 and circumstances in which it's being used.

23 Q. Well, maybe this will refresh
24 your recollection did they use language to the effect
25 it depended on the relationship between the dancers,

800.523.7887

Associated Reporters Int'l., Inc.

Page 160

1 Metro Enterprises/John Scarfi - 7-15-19

2 the petitioners, the club?

3 A. Exactly. And that relationship
4 whether or not they are employees, independent
5 contractors, tenants, Martians whatever will
6 determine -- should be used to determine whether or
7 not those -- that purchase of script is taxable or
8 not.

9 Q. Yes, obviously, I just want to
10 know if -- if -- if this is true or not that
11 Christine Scala's audit report could not have taken
12 the Third Department decision into effect because her
13 audit report pre-dated that but knowing and reading
14 her audit report, did she in her audit report cover
15 the criteria the Third Department looked at?

16 A. Not only did she not use any --
17 use the criteria as described in the Third
18 Department, she never even discussed the issue as to
19 whether or not the dancers were deemed to be
20 employees or not with us. We totally discussed them
21 being tenants and the first time we found out that
22 the State was holding them as employees is when we
23 received the audit report through a FOIL request.

24 So she did no underlying work. It --
25 it -- they pulled it out of thin air that they were

800.523.7887

Associated Reporters Int'l., Inc.

Page 161

1 Metro Enterprises/John Scarfi - 7-15-19

2 employees but we tend to agree with them at this
3 point.

4 Q. I -- I -- I would say, you tend
5 to -- it's -- it's -- it's sort of evolving, I guess.
6 Is that what's happening?

7 A. Yes, we were involved in a number
8 of different lawsuits in a never -- a number of
9 different venues. Jennifer testified to before we
10 have a class action lawsuit by dancers and -- well,
11 to give the history to the Court it all started
12 twenty some odd years ago when we opened the clubs.
13 I always felt that there had to be a -- clubs at that
14 point treated the dancers as independent contractors
15 or employees and I didn't think either one really fit
16 the definition. We hired an attorney from Minnesota
17 who was very active in the adult entertainment
18 industry and she recommended that we do the leases
19 and create this whole situation where the dancers
20 would be deemed to be tenants.

21 Unfortunately, that was twenty some
22 odd years ago and the laws have evolved greatly
23 thereafter. I spoke to that attorney, Ms. Thomas,
24 maybe a year or two ago and she said, yeah, it
25 doesn't work anymore. The Courts have pretty much

800.523.7887

Associated Reporters Int'l., Inc.

Page 162

1 Metro Enterprises/John Scarfi - 7-15-19

2 universally determined that these dancers are

3 employees.

4 Q. Within the -- your club and what

5 you know about the other clubs, do the clubs set

6 prices for their entertainers or anything?

7 A. Again, this was discussed with

8 Ms. Genovese on a -- Ms. Scala was not always at

9 every appointment, Ms. Genovese was. So it was

10 discussed with one or both at the time the -- in

11 order to create harmony in the workplace we have a

12 suggested minimum of a twenty dollar dance fee and if

13 you go to any club that twenty dollar is pretty much

14 everywhere.

15 However, if you sat down with a girls

16 and said, hey, I only got ten dollars tonight can I

17 give you ten dollars and she wants to do a dance, she

18 does a dance, nobody stops it. If the dancer says I

19 don't like the way you look I want two hundred

20 dollars to do a dance, she gets two hundred dollars

21 for the dance.

22 There is no enforcement of any type of

23 price structure as far as the dance what the dancer

24 receives or not. She could a hundred dances for

25 free, her time, nobody stops her or cares, whatever.

800.523.7887

Associated Reporters Int'l., Inc.

Page 163

1 Metro Enterprises/John Scarfi - 7-15-19

2 So it's -- it's -- there is no price
3 structure as far as the tip that the customer gives
4 to the dancer. There -- our price structure for
5 rooms as somebody was -- Ms. Scala was testifying too
6 that if you stayed for fifteen minutes it's this much
7 for this sized room and whatever, whatever, whatever,
8 but there is no price structure at all as far as the
9 tips that the dancers receive.

10 Q. People have testified today that
11 Metro sells script, you being a C.P.A., is that
12 accurate?

13 A. No. The way that the business
14 was organized is that Metro Enterprises had each
15 entertainer sign a contract with them allowing Metro
16 Enterprises to process their credit cards for tips on
17 their behalf. So since it's a contractual
18 relationship between the dancer, employee and Metro,
19 the money that Metro collects is not their money,
20 it's always been the dancers' money and as a tip,
21 it's always been the dancers' money. The Federal
22 Labor Standards Act emphasizes that greatly that it's
23 always the employees' money.

24 So it would be wrong -- it would be
25 like saying American Express, to give you a broad

800.523.7887

Associated Reporters Int'l., Inc.

Page 164

1 Metro Enterprises/John Scarfi - 7-15-19

2 example, sells eighty billion dollars a year -- there
3 income is eighty billion dollars a year because
4 people charge eighty billion dollars on American
5 Express. No, American Express makes the three to six
6 percent that they charge as a fee on the transaction
7 but the underlying transaction is not American
8 Express's revenue and when you pull American
9 Express's financial statements all those transactions
10 that the customers used -- now the customers, you get
11 your American Express bill and hopefully at the end
12 of the month you pay it. You send the check to
13 American Express. It's not American Express's money.
14 its Macy's money, its Amazon's money, it's whoever's
15 money where you bought, whatever you bought and I've
16 never heard that argument outside of this court ever
17 raised that money held by a processor is deemed to be
18 theirs, it's not.

19 The -- the underlying -- the income
20 portion is the receipt of the financial transmitter,
21 the underlying portion belongs to the customers or
22 the store where they spent the money dependent and
23 that's a basic tenet of accounting and like I say,
24 sales tax is not auditing American Express today for
25 all the transactions that they did, that they

800.523.7887

Associated Reporters Int'l., Inc.

Page 165

1 Metro Enterprises/John Scarfi - 7-15-19

2 collected the money on. So why they would be doing
3 it to Metro is again beyond my expertise.

4 Q. What other sources of revenue
5 that an entertainer or a dancer would have as an
6 employee?

7 A. They are employees as -- as of
8 this point. So the only way that an employee can
9 make money is either a wage which is deemed to be
10 paid by the employer or a tip which is deemed to be
11 paid by the customer. The customer -- the tip, both
12 of which are included in their gross wages. Now, I
13 just want to clarify something that you guys were
14 discussing before, while I think of it because you
15 brought it up.

16 When -- for the brief period of time
17 that Metro Enterprises was allowing other employees
18 other than dancers to receive tips and they were
19 processing the credit cards for it, those tips were
20 reported back to M.L.B. and/or 44th or whichever
21 company it was and put it on the W-2s. It was
22 included in the individuals' income tax on the W-2.

23 So there was knowledge of it, there
24 was reporting of it, it wasn't mystery money, since
25 it was paid by credit card we know how much the

800.523.7887

Associated Reporters Int'l., Inc.

Page 166

1 Metro Enterprises/John Scarfi - 7-15-19
2 person received, we were under the responsibility to
3 put it on their W-2 and we did. So if you look at
4 the W-2s of M.L.B. or 44th you will see cash tips and
5 credit cards tips and that was part of the credit
6 card tips and for some reason Ms. Scala didn't see
7 that or didn't recognize that, I don't why.

8 Q. So the customer can -- can -- can
9 only give a tip to a dancer you are saying?

10 A. Customer could give a tip to
11 anyone that they feel like they could give me a tip
12 if they really like me but the use of script was only
13 to give credit cards tips to dancers. They could
14 give cash tips to the -- and during the course of an
15 evening one customer might have done all three. He
16 might have given a dancer forty dollars in cash that
17 he had, then he went to the A.T.M. and took out a
18 hundred dollars and gave her that and then he was out
19 of cash and his -- reached his A.T.M. limit so then
20 he goes to buying script.

21 So in the course of an -- in the end,
22 his cash tips or his credit cards tips could go to a
23 waitress or a host, a bouncer or whoever he wanted,
24 the door girl any -- like I said, anybody can tip
25 anybody. But we limited the use of script only to

800.523.7887

Associated Reporters Int'l., Inc.

Page 167

1 Metro Enterprises/John Scarfi - 7-15-19
2 dancers because dancers are the only ones who had the
3 contractual obligate -- contractual relationship with
4 Metro Enterprises, the other people didn't. So John
5 would be taking -- John being Metro Enterprises would
6 taking their money illegally if he processed their
7 script sales because he didn't have agreements with
8 them.

9 Q. Is that the purpose of the
10 interpleader suit?

11 A. That's part of the purpose of the
12 interpleader suit. That -- you have to believe the
13 suit is basically saying I can't pay the same money
14 to two different governmental agencies. New York
15 State Sales Tax or -- two different entities, New
16 York State Sales Tax is saying on one hand that the
17 money belongs to them, one the other hand the dancers
18 and the Department of Labor through the Federal Labor
19 -- Fair Labor Standards Act is saying that the money
20 really belongs solely and exclusively to the dancer
21 because you can't tax a tip.

22 MR. BOBROW: Thank you.

23 A.L.J. RUSSO: Mr. Jack?

24 MR. JACK: Sure. Thank you, Judge.

25 CROSS EXAMINATION

800.523.7887

Associated Reporters Int'l., Inc.

Page 168

1 Metro Enterprises/John Scarfi - 7-15-19

2 BY MR. JACK:

3 Q. Mr. Scarfi, do you -- you've been
4 in --

5 A. He is up there.

6 Q. Mr. Capeci, sorry. Sorry to mix
7 you up.

8 A. I'm the good looking one.

9 Q. I agree. You've been involved in
10 these clubs for a long time, haven't you?

11 A. Yes.

12 Q. And you've known Mr. Bobrow also
13 for a long time?

14 A. Yes, at this point.

15 Q. And so the audits that you
16 described that you testified about including the
17 P.C.S. audit and Frank Marchello, club V.I.P.,
18 twenty-twenty all of those audits, you are fully
19 familiar with what was going on. Weren't you?

20 A. I was a consultant to Marchello,
21 The Estate.

22 Q. And for -- in the Marchello case,
23 I mean the Department insisted that the sale of the
24 script was subject to tax --

25 A. No.

800.523.7887

Associated Reporters Int'l., Inc.

Page 169

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. -- and how do you --

3 A. No, no. The Marchello case was a
4 responsible party case --

5 Q. Uh-huh.

6 A. -- and the discussion was whether
7 or not John Vargo and --

8 MR. BOBROW: Asland.

9 THE WITNESS: -- Steve Asland were
10 responsible parties as well as The Estate of --
11 what's Marchello's, first name? I forgot.

12 MR. BOBROW: Frank.

13 BY MR. JACK: (Cont'g.)

14 Q. Frank.

15 A. Frank Marchello. During the
16 course of that trial, Alton Plunkett, as a matter of
17 fact, my good friend, testified that dancers were not
18 taxable but it was never an issue before the Court.
19 The only issue before the Court was whether or not
20 Marchello -- The Estate of -- Frank Marchello was a
21 responsible party, therefore, his estate. The Court
22 decided one way, it got appealed, got it re-tried,
23 got appealed again. On the appeal one of -- the
24 justice who wrote the decision said, oh, by the way,
25 it's in my opinion that dances should be taxable.

800.523.7887

Associated Reporters Int'l., Inc.

Page 170

1 Metro Enterprises/John Scarfi - 7-15-19

2 Now, that's what's known as --.

3 MR. BOBROW: Is that what you were
4 looking for?

5 THE WITNESS: Yeah, give me the word.

6 A.L.J. RUSSO: Please don't instruct
7 the witness.

8 THE WITNESS: Okay. Don't coach me
9 but there is a word for it which everybody here knows
10 but me at this point. That it's not admissible, it's
11 not -- it's just a statement that a judge made.

12 Unfortunately, in a subsequent case
13 the State brought it up and the poor representation
14 that that club had at the time did not object to it
15 and it got built into another decision and that's
16 what everybody started citing but we discussed that
17 in length on the phone with Mr. Carzo and all those
18 other people who I was having my phone conversations
19 as to why Marchello wouldn't apply because there is a
20 different set of facts and circumstances.

21 So even if you did want to deem that
22 the dances at the Old V.I.P. club, which was the club
23 in question, were taxable their facts and
24 circumstances were completely different than mine and
25 they rang the dances up in the cash register. They

800.523.7887

Associated Reporters Int'l., Inc.

Page 171

1 Metro Enterprises/John Scarfi - 7-15-19

2 didn't segregate them at all. So they were part of
3 their receipts and not my argument.

4 But the State -- because as I said
5 they brought it up to me on the phone few times,
6 ultimately agreed that it didn't apply to us because
7 that's not how we ran the club.

8 BY MR. JACK: (Cont'g.)

9 Q. What I am -- okay. At any rate
10 with the Frank Marchello case there were three
11 separate club setup direct, Club V.I.P., Prestige and
12 V.I.P. Incorporated. Do you remember that?

13 A. Okay. I probably know more than
14 you do about how that whole thing was set up.

15 Q. Oh, that's good you can tell me
16 that?

17 A. Yeah. Frank Marchello was the
18 original owner.

19 Q. Uh-huh.

20 A. He decided that he no longer
21 wanted to run the club. He hired John Vargas --

22 Q. Vargo.

23 A. -- Vargo, who used to be -- he
24 used to work for us a thousand years ago, so I knew
25 John also.

800.523.7887

Associated Reporters Int'l., Inc.

Page 172

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. What do you mean us?

3 A. He worked for one of the clubs, I
4 think the predecessor club to M.L.B. even before I
5 owned it. Another one of my clients owned it.

6 Q. Uh-huh.

7 A. Vargo took it over, he was
8 working in partnership with Steve Asland. They
9 created three different corporations and they had
10 three different pots of money and -- but it was all
11 controlled by Vargo and Asland. It wasn't a third
12 party. It wasn't outsider, it was nothing similar to
13 the way that -- our ins -- our club was run where we
14 have just a credit card -- again, the credit card
15 processing is on behalf of the dancers. They didn't
16 have anything like that there. They just had three
17 different -- they were divvyng up and through
18 discussions with Steve Asland back in the day, he did
19 it because they were afraid if they didn't pay the
20 liquor bill they would stop shipping liquor. So they
21 wanted to have three different pools of money to pull
22 from when they had to pay things. And it was for
23 their convenience and in that Marchello decision they
24 pretty much decided that they were operating as one.

25 Q. But there, the club in the

800.523.7887

Associated Reporters Int'l., Inc.

Page 173

1 Metro Enterprises/John Scarfi - 7-15-19

2 Marchello that sold the script only sold the script,
3 correct?

4 A. But they included it in the gross
5 receipts.

6 Q. But they only sold script,
7 correct? Is that -- that was the only claim --.

8 A. One of the three entities I think
9 was to sell the script.

10 Q. Right.

11 A. Right.

12 Q. That was the only function of
13 that entity was to sell the script.

14 A. But again, it was owned by Vargo
15 and Asland or one or the other, and it was part of
16 the -- they included it as part of their gross
17 receipts, they didn't segregate.

18 Q. So it means -- were you confused
19 at this time? You mean you have any discussion with
20 people in auditing -- and they seem to be telling you
21 something?

22 A. Asland. Okay. If you want to go
23 back to that -- that audit ash -- the Tax Department
24 never looked at the books and records because before
25 they got to the audit Vargo died, Asland wouldn't co-

800.523.7887

Associated Reporters Int'l., Inc.

Page 174

1 Metro Enterprises/John Scarfi - 7-15-19
2 operate and they assessed off the top. What -- what
3 Plunkett did and I know this for a fact because
4 Plunkett told -- he had done a previous audit on
5 Paradise and I know Paradise had two million in
6 receipts or ten million in receipts and they assessed
7 them two million dollars or whatever it was. V.I.P.
8 had forty million dollars in receipts, so he assessed
9 the eight dollars, then they removed the book and
10 records in Marchello, so it's not a very good example
11 to use.

12 Q. But in any event, I mean, all
13 along in those cases the Division was -- additional
14 tax on the sale of script, correct?

15 A. No.

16 Q. Isn't that what the tribunal
17 eventually decided in Marchello?

18 A. No, script had nothing to do with
19 it. The Judge said in the dis -- in the -- in the
20 tribunal decision after the second appeal that in his
21 opinion he felt dances were taxable.

22 He didn't mention script, he didn't
23 mentioned cash, he said dances. The only -- this
24 recent development of where the Tax Department is
25 saying that script is taxable is a new development

800.523.7887

Associated Reporters Int'l., Inc.

Page 175

1 Metro Enterprises/John Scarfi - 7-15-19

2 and it didn't come out of Marchello.

3 Q. Yes, I mean, I'm sorry. But the
4 dicta that you referred to --

5 A. Thank you.

6 Q. -- comes from -- comes from the
7 Marchello case, correct?

8 A. It comes from there.

9 Q. Okay. So in -- in that case the
10 tribunal said the sale of scripts will be taxable.
11 You think it's dicta I mean, the Judge can decide
12 whether it's dicta or not?

13 A. It is dicta because it's not --
14 it's not in the -- if you look at what the tribunal
15 was asked to review, it's not there.

16 Q. Okay.

17 A. Nowhere in it does it state --
18 they were -- it was solely a responsible party case.

19 Q. Okay. But these things were
20 going on all at the same point, right? Your -- your
21 --.

22 A. By the time the third -- the --
23 the -- the second appeal was heard was late into -- I
24 -- I don't remember the date but it was years
25 afterwards.

800.523.7887

Associated Reporters Int'l., Inc.

Page 176

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. Yes. Forget the second appeal
3 and when the assessments were issued and at about the
4 same time that you were having the meetings in Albany
5 and whatever it is you were doing, correct? The
6 assessments to Frank Marchello and V.I.P. club and
7 John Vargo and whoever else.

8 A. Those assessments --

9 Q. Yeah.

10 A. -- were issued before my audit.

11 Q. Before your audit?

12 A. Yeah.

13 Q. Okay. So there -- okay. I have
14 no further questions, Judge.

15 A.L.J. RUSSO: Thank you Mr. Bobrow,
16 any re-direct?

17 MR. BOBROW: Yes.

18 RE-DIRECT EXAMINATION

19 BY MR. BOBROW:

20 Q. And since we are talking about
21 the Marchello case and I was counsel for Frank
22 Marchello, do you recall and this is a key fact which
23 we -- we should understand. I recall and do you
24 recall -- let me rephrase it.

25 Do you recall whether there was an

800.523.7887

Associated Reporters Int'l., Inc.

Page 177

1 Metro Enterprises/John Scarfi - 7-15-19
2 operating agreement for the three corporations that,
3 you know, the attorney had drafted and I thought that
4 distinguished Marchello that there was one operating
5 agreement that -- that pulls together the functions
6 of the three corporations whereas here in the case
7 today --.

8 MR. JACK: Objection, Judge.

9 A.L.J. RUSSO: Yeah.

10 MR. JACK: This is going to read like
11 -- I hope Mr. Bobrow is going to take -- kind of
12 raise his hand based on the testimony he has given,

13 A.L.J. RUSSO: Sustained.

14 BY MR. BOBROW: (Cont'g.)

15 Q. Do you recall such an --.

16 A.L.J. RUSSO: Sustained, we're facing
17 this.

18 BY MR. BOBROW: (Cont'g.)

19 Q. -- do you recall such an operating
20 agreement?

21 A. Yes.

22 Q. And what was the purpose of the
23 operating agreement?

24 A. That was ultimately the downfall
25 of the Marchello responsible-party case. Under New

800.523.7887

Associated Reporters Int'l., Inc.

Page 178

1 Metro Enterprises/John Scarfi - 7-15-19
2 York State Liquor Law, if I just -- that's basically
3 the problem with all of these cases and all of these
4 issues, there are so many different taxing and
5 governmental agencies involved. It's very hard to be
6 in compliance with everybody at the same time. The
7 tragic mistake that the Marchello -- Frank Marchello
8 made is they had one operating agreement to operate
9 the club with these three different corporations and
10 that operating agreement was deemed to be -- you're
11 not -- under New York State Liquor Law, you are not
12 allowed to have somebody operate a license under your
13 name and that's how they lost Marchello and then
14 ultimately The Estate --.

15 A.L.J. RUSSO: Anything else, Mr.
16 Bobrow?

17 MR. BOBROW: No further questions.

18 A.L.J. RUSSO: Anything else, Mr.
19 Jack?

20 MR. JACK: I mean I just wanted to --

21 A.L.J. RUSSO: Okay.

22 RE-CROSS EXAMINATION

23 BY MR. JACK:

24 Q. So with your business model where
25 you have these employees that you've admit that

800.523.7887

Associated Reporters Int'l., Inc.

Page 179

1 Metro Enterprises/John Scarfi - 7-15-19

2 M.L.B. Enterprises which you own and 44th Enterprises
3 is the employer of these dances -- dancers, correct?

4 A. Now, yes.

5 Q. Now?

6 A. Now.

7 Q. So they weren't -- you weren't
8 the employer during the time the audit was conducted?

9 A. It seems to be that the --
10 ultimately the -- going to say, yes, I was based on
11 prior F.L.S.A. decisions that have been made it looks
12 like a fait accompli that they're going to say
13 through the entire period they were in fact employees
14 although at the -- initially I thought they were
15 tenants. And as I said before your audit report
16 states they're employees. So that's not in fact a
17 question here.

18 Q. And --

19 A. I don't know how you determine
20 it. I don't know why you determined it but you
21 determined it. So you can't go back on it now.

22 Q. If you're the employer and you're
23 responsible for the receipt of the employees?

24 A. No. Employees voluntarily under
25 Federal and State Income Tax Law, I would assume it

800.523.7887

Associated Reporters Int'l., Inc.

Page 180

1 Metro Enterprises/John Scarfi - 7-15-19

2 would be, employees are required to -- it's suggested
3 that employees fill out tip forms and provide you
4 with the amount of tips that they received. Also,
5 there is a federal law if your tips are less than
6 fifteen -- if the tips that the employees voluntarily
7 tell you about are less than fifteen percent of your
8 gross receipts, you're supposed to gross it up and
9 attribute more to the employees' wages than what they
10 actually report it to you. Again, it's sort of at a
11 crossroads here. That's going to be decided in the
12 class-action lawsuit because at the time we weren't
13 treating them as employees so there was no reporting
14 because we weren't treating them as employees. But
15 now the Courts are telling us that they were, in
16 fact, employees.

17 Q. But during the period in issue
18 then you saw no reason why you should keep track of
19 any of these money that the dancers were receiving
20 from the patrons?

21 A. There is no requirement in any
22 business to be -- my business, your business, any
23 restaurant you go to out here, there is no
24 requirement for the employer to track how much money
25 the employee makes in tips.

800.523.7887

Associated Reporters Int'l., Inc.

Page 181

1 Metro Enterprises/John Scarfi - 7-15-19

2 Q. And so --?

3 A. There is a suggestion that the
4 employee should report to the employer that amount on
5 a tip slip and I forget the form number because I'm
6 getting old. But there is a form number out there
7 that the tip slip that they -- they voluntarily are
8 supposed to tell you how much they made. But it's
9 not the employer's responsibility to track the tip.

10 If you go out to have lunch and you
11 have a twenty dollar meal and you leave a hundred
12 dollar tip on the table, the employer doesn't know
13 nor care.

14 Q. And so you have no records
15 anywhere that would say --?

16 A. Me and every other business in
17 the United States.

18 Q. Okay. Well, it's actually about
19 you. You --.

20 A. But you're making it sound like
21 it's something I do. It's not something I do, it's
22 something that everybody does. There is no legal
23 requirement, to my knowledge and somewhat
24 knowledgeable on the fact, where an employer is
25 responsible to track how much tips his employee

800.523.7887

Associated Reporters Int'l., Inc.

Page 182

1 Metro Enterprises/John Scarfi - 7-15-19
2 receives because it's impossible. You go out to
3 lunch, you have a twenty dollar sandwich, you drop a
4 hundred bill on the table because you thought the
5 waiter or waitress was cute. He takes it, puts it in
6 his pocket. How could it be the employer's
7 responsibility to tell the government that that
8 hundred dollars went to that employee? He has no
9 knowledge of it. So you can't require an employer to
10 walk on water or to report tips that he has no
11 knowledge of. Me and everybody else.

12 Q. Okay. Let's try this again. You
13 have no records anywhere that would show what portion
14 of the script, if any, was used for dance fees and
15 what portion was used for gratuities, do you?

16 A. There are no dance fees, so the
17 answer is zero. So I've got plenty of records that
18 shows zero.

19 Q. So --.

20 A. Where are you going? You're
21 trying to get me to say something that's not true.

22 Q. The --.

23 A. The dancers are not -- the dance
24 -- the money that was received by the dancers is
25 dancer money. It is not club money. It does not go

800.523.7887

Associated Reporters Int'l., Inc.

Page 183

1 Metro Enterprises/John Scarfi - 7-15-19
2 through my bank account. The portion of which went
3 through Metro Enterprises' bank account was under a
4 contractual obligation between the dancer and Metro
5 and it was never included in Metro's gross receipts.

6 So it's not Metro's money, it's not my
7 money, it's the dancers' money. And under the
8 Federal Labor Standards Act that money has now been
9 deemed to be tips. Any money paid directly from a
10 customer to an employee, it doesn't matter if it's a
11 dancer, a waitress, a bartender, a chef or whatever,
12 if it's paid directly from the customer to the
13 employee, it's deemed to be a tip. That's under the
14 Federal Labor Act. The State Act is even more
15 restrictive.

16 Q. Are you finished? So does it
17 mean you have no record of any of this?

18 A. I have records of everything but
19 I can't have a record of nothing. You're asking me a
20 question that's unfair because you're not asking me a
21 question with a yes or no answer. Do those records
22 exist? No, because there are no records --

23 Q. Okay.

24 A. -- because they can't exist.

25 They don't belong. There is no such thing. Now, if

800.523.7887

Associated Reporters Int'l., Inc.

Page 184

1 Metro Enterprises/John Scarfi - 7-15-19

2 you're asking me whether Metro Enterprises has

3 records, they do. But you never asked that question.

4 MR JACK: I have no further questions.

5 A.L.J. RUSSO: Thank you.

6 MR. JACK: Thanks.

7 A.L.J. RUSSO: Mr. Bobrow, anything

8 further?

9 MR. BOBROW: Yes. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BOBROW: (Cont'g.)

12 Q. We've been talking about how the
13 characterization of the service employees has changed
14 over the years. Would it be fair to say that you
15 mischaracterized them in the past, these tenants, and
16 now you're enlightened that they should be employees?

17 A. I am enlightened for a class
18 action lawsuit that my treatment of them in the past
19 was incorrect and should be -- again, there is no
20 decision in the case yet. I'm assuming that that's
21 the way the decision is going to go, based on all the
22 case law that we've read that pretty much brings that
23 to bear.

24 MR. BOBROW: And I just want the

25 record to show that we did issue a subpoena to Brett

800.523.7887

Associated Reporters Int'l., Inc.

Page 185

1 Metro Enterprises/John Scarfi - 7-15-19

2 Cohen, who was counsel to the dancers, and the
3 entertainers and he refused to appear. We wanted to
4 put more information on the record.

5 No further questions.

6 A.L.J. RUSSO: Okay. I just have a
7 couple of questions for you, Mr. Capeci.

8 EXAMINATION

9 BY THE A.L.J.

10 So -- so is it fair to say that during
11 the period in issue, if you were not treating the
12 entertainers as employees, you're not withholding any
13 taxes for them at that time?

14 THE WITNESS: Right. Which is part of
15 the class action lawsuit, yes.

16 A.L.J. RUSSO: And were you paying any
17 workers' compensation insurance for them during that
18 period?

19 THE WITNESS: Again, no, because we
20 didn't deem them to be employees at that time.

21 A.L.J. RUSSO: Thank you. Anything
22 further for this witness?

23 MR. JACK: No, Judge. Thank you.

24 A.L.J. RUSSO: Okay. Thank you.

25 You're excused.

800.523.7887

Associated Reporters Int'l., Inc.

Page 186

1 Metro Enterprises/John Scarfi - 7-15-19

2 THE WITNESS: Thank you.

3 A.L.J. RUSSO: Let me make sure that
4 it's the same copy that I have -- Okay. Mr. Bobrow,
5 your next witness.

6 MR. BOBROW: I'd like to re-call John
7 Scarfi for one to two questions.

8 (Recalled John Scarfi)

9 A.L.J. RUSSO: Mr. Scarfi. I'll swear
10 you again since you have been excused. Do you swore
11 or affirm to tell the truth, the whole truth and
12 nothing but the truth?

13 MR. SCARFI: Yes.

14 THE WITNESS: JOHN SCARFI; Sworn

15 A.L.J. RUSSO: Go ahead.

16 DIRECT EXAMINATION

17 BY MR. BOBROW:

18 Q. When I was recently talking to
19 Christine, I asked her this was the issue, could she
20 name employees that worked for both companies and
21 questions along those lines. Could you clarify what
22 the -- how the -- the clubs and Metro operated with
23 respect to sharing employees or having employees help
24 each other?

25 A. Alisha Holland worked for the

800.523.7887

Associated Reporters Int'l., Inc.

Page 187

1 Metro Enterprises/John Scarfi - 7-15-19
2 club. She lived next door to the bank. The bank
3 wouldn't release the money unless she was a signer on
4 the account. I couldn't make it to the bank all the
5 time so I had to put her in order to sign her on the
6 account to pick up the money and bring it to the
7 club.

8 Q. Was she compensated for that?

9 A. No.

10 Q. How would you characterize it?

11 As a favor?

12 A. It's just a favor. Small
13 business, that's all. Nothing more, never paid her.

14 Q. Is there anything else you want
15 to add with respect to, you know, employees operating
16 like that with --?

17 A. No, I don't want to add. Well,
18 you have employees that run credit cards. The
19 waitress runs a credit card, bartender runs a credit
20 card for the waitress, it doesn't change it from that
21 being the waitress's tip. It runs through a
22 restaurant's checking account, it doesn't change it
23 from being a tip. So I go by what the law tells me
24 is a tip. And as far as treating the girls, I
25 treated it the way I thought I was supposed to treat

800.523.7887

Associated Reporters Int'l., Inc.

Page 188

1 Metro Enterprises/John Scarfi - 7-15-19

2 it. It's on the law, you know. You can't -- you
3 don't decide who is an employee, the Court tells you
4 they're an employee, it's retroactive. Six, seven,
5 eight years. So it's big, big trouble.

6 Q. John, could you tell us what
7 would happen if you, I'll say messed up or did
8 something wrong with the employee tips?

9 A. Yeah. I'm hold -- it's double or
10 triple damages plus legal fees. If I unlawfully
11 withheld a percentage of their tip which is what
12 they're claiming that I did.

13 Q. So in other words, they're
14 claiming they're entitled to one hundred percent of
15 the tips without any sales tax applied to it.

16 A. Correct. But I don't think the
17 government is arguing that their sales tax if it's a
18 tip. At least in the interpleader they can see that
19 if it was a tip it's not served under sales tax.
20 They just said it was our burden to prove that it was
21 a tip. I said, "Well, under which law do you want to
22 prove it under, state law or the federal law."
23 They're all going to be deemed employees, you've
24 already deemed them. I've never met a government
25 agency in my life, workman's comp, disability, tax

800.523.7887

Associated Reporters Int'l., Inc.

Page 189

1 Metro Enterprises/John Scarfi - 7-15-19
2 department that never said -- they only say that
3 dancers are employees, always. They don't care what
4 you say. And so they finding them out to be
5 employees.

6 Q. Are you saying that a hundred
7 percent of what a customer gives in script to the
8 dancer is a tip?

9 A. Yes, because there is only two
10 ways you can pay an employee, wages and gratuities.
11 Those were the only two sources of income for service
12 worker. To be a wage it had to be paid by the
13 employer out of the employer's gross receipts.

14 If it's not a wage, the government
15 says it's a tip. It's really a simple test, not very
16 complicated. It had to be paid out of the employer's
17 gross receipts and it had to be paid by the employer.
18 Otherwise, it's a gratuity. That's why you always
19 lose, you can't win.

20 Q. And it sounded from the
21 discussion today, you know, nobody tells the customer
22 how much of a tip, it's purely discretionary with the
23 customer?

24 A. It's purely discretionary. There
25 is a minimum suggested, but even that is an I.R.S.

800.523.7887

Associated Reporters Int'l., Inc.

Page 190

1 Metro Enterprises/John Scarfi - 7-15-19

2 regulations. The I.R.S. says that you can't say the
3 word mandatory. You go to a restaurant today and
4 used to say eighteen percent mandatory, gratuity for
5 six people or more. You can't say that anymore. You
6 have to say minimum suggested. But all the Courts
7 will say -- in our cases will say, well, the customer
8 have a right to choose what girl he wanted. Yes.
9 Did he have to choose -- did he have a choice to pay
10 her more money? Yes, you lose. It's a tip.

11 MR. BOBROW: No further questions.

12 A.L.J. RUSSO: Mr. Jack, anything
13 further?

14 MR. JACK: No questions, Judge.

15 A.L.J. RUSSO: You're excused. Thank
16 you. Mr. Bobrow, your next witness.

17 MR. BOBROW: No further witnesses,
18 Your Honor.

19 A.L.J. RUSSO: Okay. Thank you. Mr.
20 Jack, does the Division have anything further at this
21 time?

22 MR. JACK: Nothing further, Judge.
23 Thank you.

24 A.L.J. RUSSO: Okay. All right. Will
25 both sides want to be presenting post hearing briefs?

800.523.7887

Associated Reporters Int'l., Inc.

Page 191

1 Metro Enterprises/John Scarfi - 7-15-19

2 MR. JACK: Yes, Judge.

3 MR. BOBROW: Yes, Judge.

4 A.L.J. RUSSO: Okay. We'll go off the
5 record for a moment so I can look at my calendar --

6 MR. BOBROW: Sure.

7 A.L.J. RUSSO: -- and set up a
8 schedule.

9 (Off record, 15:24 to 15:25)

10 A.L.J. RUSSO: Okay. For the briefing
11 schedule and I am allowing time for the transcript to
12 come out. Mr. Bobrow, you're aware that you need to
13 make arrangements with the Court reporter --

14 MR. BOBROW: Yes.

15 A.L.J. RUSSO: -- for the hearing
16 transcript? Okay. So the petitioner's brief will be
17 due September 9th, 2019.

18 The Division's brief will be due
19 October 15th, 2019.

20 The petitioner's reply brief will be
21 due November 5th, 2019. It's the responsibility of
22 the parties to meet this schedule. All requests for
23 extensions must be in writing, stating the reason for
24 the request and filed within the time limits
25 prescribed for the filing of briefs. Any briefs or

800.523.7887

Associated Reporters Int'l., Inc.

Page 192

1 Metro Enterprises/John Scarfi - 7-15-19

2 other documents not filed in accordance with the
3 schedule will be returned to the party that filed
4 them.

5 Parties are responsible for sending
6 copies of anything submitted to the division of tax
7 appeals to the other party as well. Each party is
8 responsible for meeting their due dates regardless of
9 whether they received anything from the other party.

10 Now before we do closing arguments let
11 me just state once I close the record no additional
12 documents will be accepted. With that in mind, Mr.
13 Jack, do you have anything further for the Division?

14 MR. JACK: No, Judge.

15 A.L.J. RUSSO: Mr. Bobrow, do you have
16 anything further?

17 MR. BOBROW: No, Your Honor.

18 A.L.J. RUSSO: Okay. Thank you. Will
19 parties be making closing arguments? Mr. Jack.

20 MR. JACK: Yes, Judge.

21 A.L.J. RUSSO: Okay. You may make
22 your closing argument now.

23 CLOSING ARGUMENT

24 MR. JACK: Okay. At some point,
25 Judge, you're going to get back and you're going to

800.523.7887

Associated Reporters Int'l., Inc.

Page 193

1 Metro Enterprises/John Scarfi - 7-15-19
2 look at this record and I hope you can figure out
3 what's going on here in a way. But there is -- I
4 don't think it's going to be easy. And we can start
5 with the motion for summary determination that Mr.
6 Bobrow filed and refers to a Notice to admit that he
7 filed on June 18th, except it was actually filed on
8 June 20th and so the implication in there is, I mean,
9 it's filed in June 18th, it's supposed -- of course,
10 by the time I respond, my response would have been
11 late had I responded to it two days -- within two
12 days of the due date, it would have been late and --
13 and you would see that in the record when -- when you
14 -- when you look at it and -- and that's just the tip
15 of the iceberg, you know what I mean, every fact you
16 look at evolves based on the argument that these
17 petitioners are trying to make and it keeps changing.

18 So by the time you get to look at the
19 briefs, I'm sure you're going to hear somewhat
20 different arguments from the ones that were provided
21 here today. But the crux of the issue really is
22 whether or not Metro Enterprises Corp. and John
23 Scarfi were responsible for the taxes of M.L.B.
24 Enterprises Corporation and 44th Enterprises
25 Corporation, Lace and Stiletto. And that's the issue

800.523.7887

Associated Reporters Int'l., Inc.

Page 194

1 Metro Enterprises/John Scarfi - 7-15-19
2 with regard to the bar sales, coat checks and
3 whatever else. The thirty eight million dollars in
4 additional sales that were assessed against Metro for
5 the sale of script, I think that's a well-settled
6 area and this is no different from any other strip
7 club where the sale of script or the funny money and
8 used the funny money to purchase lap dances in a
9 strip club and the Tribunal for the first time in --
10 in Frank Marchello determined that those receipts
11 were subject to tax, of course, Mr. Bobrow has
12 referred to it as dicta and the tribunal has to --
13 have determined that it's not dicta. In fact,
14 couldn't determine that Mr. Marchello and John Vargo
15 and Steve Lat -- Asland or anybody else for that
16 matter were responsible for taxes if there wasn't an
17 underlying liability. So it's -- it's well settled
18 that these sales are subject to sales tax.

19 And when Mr. Doyle filed his petition
20 for Metro and John Scarfi, the petition clearly
21 states that the script was used to pay dance fees and
22 to pay gratuities.

23 Well, based on what happened here
24 today I'm sure that is going to have to change also
25 because Mr. Capecci and Mr. Scarfi both claimed that

800.523.7887

Associated Reporters Int'l., Inc.

Page 195

1 Metro Enterprises/John Scarfi - 7-15-19
2 this is all gratuity, I mean there is -- none of it
3 is dance fees. But that's -- that's totally opposite
4 to what they themselves claimed in the petition,
5 which is the same thing that they claimed in all of
6 the filings before the Supreme Court of Manhattan and
7 before the Federal District Court.

8 So, again, the facts as they're
9 presented by these petitioners would change and these
10 witnesses are not credible as to what occurred in
11 this establishment or these establishments. I mean,
12 whether or not it was a one esta -- one establishment
13 or multiple establishments it's still up to question.
14 I mean, Mr. Capeci has testified and he still feels
15 like he can easily refer to P.C.S. and whoever else
16 the predecessors were as us. It's the same entity,
17 it's the same people operating these clubs and what
18 they've done and what they continue to do is continue
19 to structure the operations in such a way that they
20 can make claims like -- like and this is all a
21 gratuity, none of this belongs to either M.L.B.
22 Enterprises, 44th Enterprises, Lace, Stiletto or
23 Metro, it all belongs to the girls.

24 And funny they don't bring any of the
25 girls to testify that this money actually belongs to

800.523.7887

Associated Reporters Int'l., Inc.

Page 196

1 Metro Enterprises/John Scarfi - 7-15-19
2 them because -- and when you look at the Ms. Dennis'
3 claim in the -- in the -- in the Supreme Court, she
4 is not claiming that this money belongs to her. She
5 is claiming that the gratuity portion belongs to her.
6 I think these dancers are smart enough to understand
7 that thirty eight million dollars are receipts that
8 go through an enterprise, it doesn't belong to me. I
9 mean after you've the fees and whatever else, the
10 remainder still doesn't belong to me because I'm not
11 the one who operates this business. And Mr. Scarfi
12 does, Mr. Capeci does and Glenn Oricchio does. These
13 are the ones who operate the business. We're simply
14 working here and when we work there, they refused to
15 pay us minimum wages and they refused to pay us the
16 gratuity that we made.

17 Well, I don't think these people would
18 be fighting for the gratuity if they will get in the
19 millions of dollars that go to through these places
20 that never appear on the books of Metro, never appear
21 on the books of M.L.B., 44th or any of these
22 different businesses.

23 So I mean, one other thing that a good
24 business practice would be to say here is this money
25 that we received in for the sale of script or as they

800.523.7887

Associated Reporters Int'l., Inc.

Page 197

1 Metro Enterprises/John Scarfi - 7-15-19

2 call it for the credit card processing and since it

3 belongs to -- to these entertainers, we're going to

4 make sure that we have an audit trail that shows the

5 money was paid to them. No, they don't do that.

6 What do they do? Take hundreds of thousand dollars

7 in cash to a safe in the club and they pay off

8 everybody in cash so there is no track of it. And

9 then they can claim that all of the money went to the

10 dancers.

11 Meanwhile, they're getting sued

12 because the dancers are claiming that not only did I

13 not get all of the money that the club makes, I

14 didn't even get minimum wages or the tips that were

15 paid to me.

16 And, again, there is a clear

17 distinction between the tips that's a question here

18 and the dance fees. People clearly paid a fee to the

19 club for the dances that these girls performed.

20 The club received that fee but the

21 club has no record to show that this is the fee that

22 we received and/or this is the portion of -- of any

23 fee or any exchange for script that can be called a

24 gratuity, I mean, that record doesn't exist.

25 Mr. Scarfi and Mr. Capeci admit that

800.523.7887

Associated Reporters Int'l., Inc.

Page 198

1 Metro Enterprises/John Scarfi - 7-15-19

2 it doesn't exist. So there is no way possible for
3 them to demonstrate that any portion of -- of these
4 receipts were actually gratuity.

5 But, again, the issue really is with
6 regard to the six million dollars in additional sales
7 from the bar, from the coat check and wherever else
8 can the Division hold Mr. Scarfi and Metro
9 Enterprises responsible and you heard the testimony
10 the machine breaks charge to the other machine.
11 Obviously, Metro can't function with Mr. Scarfi and
12 one employee when Metro has this operation in eight
13 clubs going on at the same time. So, yeah, that's --
14 that's no problem, we're all friends, we just use the
15 employees from -- from those businesses to perform
16 the functions of Metro.

17 So where is the distinction and the
18 division between these entities. And Mr. Scarfi
19 testified and he said there was no reason whatsoever
20 for Metro to pay any moneys to M.L.B. or any of these
21 other businesses and the reverse you said is also
22 true. And at the time he was staring at Exhibit H
23 and he talked about a check payment to Richard
24 Kennedy, Jessica, is it Jessica -- No.

25 A.L.J. RUSSO: No, that's -- that's

800.523.7887

Associated Reporters Int'l., Inc.

Page 199

1 Metro Enterprises/John Scarfi - 7-15-19

2 somebody else.

3 MR. JACK: But -- but -- but then the
4 next one he talks about is -- I can't read it. But
5 in between that is a check to M.L.B. Enterprises for
6 twenty-one thousand nine hundred and seventy-five
7 dollars. He doesn't mention that one. I'm sure
8 there is going to be an explanation when you get your
9 brief as to why measuring the -- as paying M.L.B.
10 Enterprises twenty-one thousand dollars when Mr.
11 Scarfi has already testified that there is no
12 scenario under which Metro is paying any money to --
13 to M.L.B.

14 But when you -- when you go on Exhibit
15 H to page five, there is another check to M.L.B. for
16 sixteen thousand and fifty dollars. If you go on to
17 page six, I think there is another one for sixteen
18 thousand and fifty dollars. So I'm sure by the time
19 you finish going through this, I mean, there'll be
20 thousands of dollars that's going from -- from Metro
21 to, I mean, based on this as far as -- to M.L.B.
22 Enterprises without any explanation or any reason
23 why. And so -- and the question is, did these
24 auditors, when they were doing this audit and they
25 were given envelopes with receipts that some belong

800.523.7887

Associated Reporters Int'l., Inc.

Page 200

1 Metro Enterprises/John Scarfi - 7-15-19
2 to Metro, some belong to M.L.B., some belong to Lace
3 and Stiletto and whatever else, did they have a
4 reasonable basis for determining then that, you know
5 what, we can't figure out what's going on here but it
6 appears that Metro is paying the employees from
7 M.L.B. and M.L.B.'s employees were performing
8 functions for Metro and Metro appears to be an agent
9 for -- for -- for M.L.B. and vis e versa. But it's
10 going to be painted in the way that these auditors
11 didn't know what they were doing. I mean, they're
12 just making all of these claims and there is no basis
13 for these claims. Of course there is.

14 I mean, of course, if you have an
15 entity with no business reason whatsoever, paying
16 thousands of dollars to an entity -- entity that
17 operates from the same premises and using the
18 employees and Mr. Vargo having -- I mean not Vargo,
19 Mr. Scarfi having checks signing authority for 44th
20 Enterprises and M.L.B. Enterprises and -- and -- and
21 whoever else and Mr. Capeci, the reverse. Of course,
22 they had a reasonable basis for determining that --
23 that Metro and Mr. Scarfi were responsible for the
24 taxes, the additional taxes from the food and
25 beverage sales -- not food, but the beverage sales

800.523.7887

Associated Reporters Int'l., Inc.

Page 201

1 Metro Enterprises/John Scarfi - 7-15-19

2 from these clubs.

3 And again, there would be an

4 explanation, just like in his papers to the Court.

5 Mr. Doyle said that there was a girl, Alisha Holland

6 or whoever the person was, is justifying that Mr.

7 Scarfi and she is just signing these checks and then

8 running back and forth and putting hundreds of

9 thousand dollars -- dollars in the -- in the -- in

10 the safe for these clubs so the clubs can operate but

11 there is -- there is really no business relationship.

12 That's just -- these are just -- so all of the

13 evidence, in fact, points to what the auditor

14 testified that the Division couldn't tell who was

15 responsible for what and why because these

16 businesses, these individuals all appeared to be

17 agents, that each of them is performing functions,

18 and I mean on behalf of each other with authority to

19 act on behalf of each other. I mean M.L.B. claims to

20 be the employer of their entertainers but Metro is

21 the one -- Metro is the entity that determine what

22 hours they're going to work and gives them a schedule

23 and controlled these employees. There is nothing on

24 the record that says that any of these entertainers

25 appeared anywhere in the books and records for 44th

800.523.7887

Associated Reporters Int'l., Inc.

Page 202

1 Metro Enterprises/John Scarfi - 7-15-19
2 Enterprises, M.L.B. Enterprises, Lace or Stiletto.

3 Mr. Capeci said himself, there is no
4 record and there is no -- there is nothing whatsoever
5 that says these were employees of these clubs. So
6 who then is the employer? Isn't it the person or the
7 entity that hired them, set their schedule and
8 controlled the time and the places where they work?

9 And you would also see that here
10 they're claiming that Metro Enterprises had two
11 streams of income. One was the -- the twenty percent
12 upfront charge on the sale of script. The second was
13 the ten percent redemption fee which are the papers
14 filed again by Mr. Doyle, by Mr. Bobrow and everybody
15 else says that was the fee for the referral that
16 Metro collected when it referred these dancers to
17 these clubs. That's how it made its money, but they
18 can sit here and tell you, well, we don't even need
19 to keep track of cash and dancers could dance for
20 free and whatever else. If a dancer dances for free,
21 Metro doesn't make any money because the customer
22 doesn't have to buy a script and pay a script to --
23 to the dancer. If a dancer receives ten thousand
24 dollars in cash by their -- their own testimony,
25 Metro doesn't make any money because they don't keep

800.523.7887

Associated Reporters Int'l., Inc.

Page 203

1 Metro Enterprises/John Scarfi - 7-15-19

2 track of this cash. So how then did they get their
3 referral fee that the -- the dancers are supposedly
4 contractually obligated to pay to Metro.

5 So by the time you -- you weave
6 through all of this, hopefully you get to a point
7 where you can figure out what is the truth from Mr.
8 Scarfi's testimony, Mr. Capeci's testimony. And with
9 regard to the estoppel argument that he appeared to
10 be making with the letter from the Tax Department
11 while these -- while Mr. Bobrow is receiving this
12 letter, he is also litigating the division tax, the
13 very receipts that he is claiming these people have
14 no way of knowing should have been subject to tax.

15 He was the one Mr. -- Mr. Bobrow
16 involved in that litigation, he litigated the Frank
17 Marchello case and as Mr. Capeci says he was also
18 involved in litigation so there is no estoppel
19 argument here. And -- and these taxpayers can claim
20 that they reasonably relied on any information that's
21 contained in that letter. When you get to look in at
22 -- you would see it refers to a specific refund claim
23 which if they present information, books and records
24 to support the claim, then maybe you will be granted.
25 That's all it says.

800.523.7887

Associated Reporters Int'l., Inc.

Page 204

1 Metro Enterprises/John Scarfi - 7-15-19

2 But even if it had said something
3 else, there is no estoppel argument when the very
4 attorney and the individual, Mr. Capeci, who is so
5 connected to these businesses couldn't claim that
6 they didn't know while they were discussing these
7 matters with -- with the audit and whoever else, that
8 the Division's position was that the transactions at
9 issue are subject to tax. That's what the Frank
10 Marchello case is and all of the cases that came
11 after said those are the arguments that were being
12 made. And -- but of course you would see there have
13 been no change audit and whatever else that's --
14 that's being submitted with a summary determination
15 motion.

16 Obviously, each audit stands in its
17 own and even if the same auditor conducts an audit, a
18 follow-up audit, he or she can reach a different
19 conclusion than that -- what was reached before.

20 So there is no way that Mr. Bobrow or
21 any of his clients can claim that they reasonably
22 relied on any information contained in the letter.
23 And in that letter the question that remains is,
24 okay, given everything that has occurred here today,
25 can the Division of Tax Appeals rely on Mr. Capeci's

800.523.7887

Associated Reporters Int'l., Inc.

Page 205

1 Metro Enterprises/John Scarfi - 7-15-19
2 testimony to be credible with regard to whatever
3 discussions took place in -- in Albany. I don't
4 know, I wasn't there, in fact, he can testified I
5 refused to get involved in these discussions with
6 these people. But on his voir dire he characterizes
7 the letter in a certain way. Is that the truth? I
8 don't know but based on his incredible testimony here
9 today it is difficult, for the Division of Tax
10 Appeals to hold that he is a credible witness who
11 credibly testified about the discussions with the
12 folks in Albany or wherever the meeting took place.

13 But nonetheless, at the same time when
14 all of this was going on the Division was litigating
15 cases and issuing assessments holding the very same
16 transactions taxable. That doesn't present an
17 estoppel argument because even if there was reliance,
18 the reliance wasn't reasonable.

19 Hopefully, like I said, you can get to
20 the bottom of this and you can figure it all out but
21 the issues to me are clear and the conclusion here
22 should be clear that, one, the sale of script is
23 taxable. This was the sale of script and nobody here
24 explained how if you walk up to a machine and you got
25 a receipt that said twenty thousand dollars how you

800.523.7887

Associated Reporters Int'l., Inc.

Page 206

1 Metro Enterprises/John Scarfi - 7-15-19

2 would then go and decide how are you going to use
3 that receipt. And of course, you got the receipt and
4 you got the script in exchange for that you can then
5 go and decide what room you wanted to go to and what
6 entertainer you wanted to pay for dances. So but the
7 testimony seems to indicate no, you just got a
8 voucher for twenty dollars. Well, that would defeat
9 the purpose, wouldn't it, of that individual being
10 able to then say this is who I want to spend it on.

11 So those were the issues. I mean,
12 those -- these are the facts that you would -- you
13 would -- you would have before you and the Division
14 submits to you that there is -- the petitioner has
15 provided no evidence whatsoever that the Division
16 made any error in either assessing the sale of
17 script, I mean, assessing -- an assessment for the
18 sale on the script or assessing additional tax
19 against and Metro Enterprises and Mr. Scarfi.

20 Thank you, Judge.

21 A.L.J. RUSSO: Thank you, Mr. Jack.

22 For purposes of housekeeping, you had mentioned the
23 Notice to Admit which was part of the summary
24 determination motion. The Division did receive your
25 response to the Notice to Admit. It hasn't been made

800.523.7887

Associated Reporters Int'l., Inc.

Page 207

1 Metro Enterprises/John Scarfi - 7-15-19

2 part of the record but it's part of Division Tax

3 Appeals file. Do you want to make that a part of the

4 records for purposes of completeness?

5 MR. JACK: Sure, Judge. Especially if

6 Mr. Bobrow is claiming that he didn't receive it.

7 A.L.J. RUSSO: You did not receive the

8 response to the Notice to Admit yet? Have you

9 received that?

10 MR. BOBROW: Only today.

11 A.L.J. RUSSO: Okay. But you do --

12 you do have it now. Okay.

13 MR. BOBROW: Yeah, I did not receive

14 it in my office.

15 A.L.J. RUSSO: So Mr. Osborne, you'd

16 like to put that into the record?

17 MR. JACK: Yes, Judge.

18 A.L.J. RUSSO: Okay.

19 MR. JACK: Actually, there were two

20 notices, I mean, one dated June -- actually, there

21 were three. One dated June 18th, one dated June 20th

22 and one dated June 25th.

23 A.L.J. RUSSO: I only have the

24 Division's July 10th response.

25 MR. JACK: Right. That's the response

800.523.7887

Associated Reporters Int'l., Inc.

Page 208

1 Metro Enterprises/John Scarfi - 7-15-19

2 that's from July 10, the other Notice to Admit was
3 filed on June 25th so it -- it was --.

4 MR. BOBROW: There were two, correct.
5 Two Notices to Admit. The 20th and the 25th.

6 MR. JACK: So it is the 20th then.

7 MR. BOBROW: The first one was faxed
8 to you on the 20th. And then it was overnighted and
9 then the second one was the same thing on the 25th it
10 was faxed and then overnighted.

11 MR. JACK: Okay.

12 A.L.J. RUSSO: So the one I have looks
13 like it's in response to the June 20th Notice to
14 Admit.

15 MR. BOBROW: That's the one that I
16 received this morning.

17 A.L.J. RUSSO: Okay.

18 MR. JACK: I have the one from the
19 25th June, Judge.

20 MR. BOBROW: Did you give that to me
21 this morning?

22 MR. JACK: Yeah.

23 A.L.J. RUSSO: Okay. So I will mark
24 these and take them into the record as Division's
25 Exhibit -- the response dated July 10th will be

800.523.7887

Associated Reporters Int'l., Inc.

Page 209

1 Metro Enterprises/John Scarfi - 7-15-19

2 Exhibit P and the response dated July 15th, 2019 will
3 be accepted as Exhibit Q. All right.

4 Mr. Bobrow, your closing argument,
5 please.

6 CLOSING ARGUMENT

7 MR. BOBROW: Yes. Your Honor, this
8 case is fairly simple. And the -- the issue we
9 really need to consider first and it doesn't always
10 apply to this case, is that we have an assessment
11 made in 2018 based upon an audit report in 2018 and
12 on April of this year the Third Department with the
13 caption Metro Enterprises versus New York State Tax
14 Department comes up with a memorandum and order which
15 the petitioners here feels directly affects the issue
16 that we've been talking about the whole day.

17 So how do we handle this? Because
18 when the auditor discuss the work she did and I asked
19 her this question, she did not really, as the Third
20 Department commanded, you know, analyze the
21 relationship between the plaintiffs, the dancers and
22 the registered clubs, the audit report is devoid of
23 this.

24 So the petitioners here would not
25 object in light of the recent Third Department

800.523.7887

Associated Reporters Int'l., Inc.

Page 210

1 Metro Enterprises/John Scarfi - 7-15-19
2 decision to leave and remand the case to the audit
3 division so that now the auditor will have an
4 opportunity to comply with what the Third Department
5 says is the criteria for determining whether or not
6 script is subject to sales tax.

7 So that's sort of a unique question we
8 have in this case now. Because it's the same parties
9 with the same legal issue, and the Third Department
10 couldn't, as Mr. Jack believes, it's so simple, just
11 a script is taxable they refused to. So that's my
12 first point that I think is maybe, you know, should
13 determine what else is done.

14 In my opening statements I said the
15 distinction between a lot of these other cases as Mr.
16 Capeci testified to a lot is that the clubs back then
17 treated the dancers as independent contractors or
18 tenants but the audit report says they were employees
19 and we're -- we're in agreement with that.

20 So we have a basic distinct factual
21 distinction in this case because as Mr. Capeci said
22 an employee can only have two revenue sources. A
23 revenue source from the employer and then the
24 customer can also provide funds to the employee. But
25 it says in accordance with the labor law and

800.523.7887

Associated Reporters Int'l., Inc.

Page 211

1 Metro Enterprises/John Scarfi - 7-15-19
2 accounting the way Mr. Capeci describes it. If the
3 funds are going to the dancer from the customer,
4 that's it, gratuitous tip. This, you know, no one --
5 the customer -- he said -- I asked him this question,
6 the customer does not have to give the dancer any
7 specific amount, it simply if he is satisfied like
8 the waitress, he could give a larger tip, if he is
9 not satisfied he can give a smaller tip.

10 So that distinguishes all these other
11 cases including Marchello and the cases that came
12 after Marchello and then the other basic distinction
13 with Marcello, which Mr. Capeci remembered, which was
14 there was an operating agreement and the operating
15 agreement had the effect of pulling everything
16 together, the three entities. Whereas through most
17 of the testimony here today, we've established that
18 we have on the record, let me say, that these
19 entities were totally separate, no interlocking
20 shareholders, no interlocking officers, owners,
21 employees these were totally separate parties which
22 distinguishes the facts in this case from the facts
23 in the earlier cases.

24 The record should show if you've heard
25 that I still -- I only received the admissions today.

800.523.7887

Associated Reporters Int'l., Inc.

Page 212

1 Metro Enterprises/John Scarfi - 7-15-19

2 I did not receive them in my office. Mr. Jack did
3 have the correct mailing address but I don't know why
4 I did not get them.

5 And finally, I would like to
6 understand why I requested a meeting to discuss
7 stipulations. I did not understand Mr. Jack's answer
8 before. Why did he not come back to me and work with
9 me for my July 20th letter where I said, "You
10 canceled the first meeting, let's reschedule and
11 let's work on stipulations." It's one of the rules.
12 Thank you.

13 A.L.J. RUSSO: Thank you, Mr. Bobrow.
14 Okay. If there is nothing further from either party
15 at this point, I'm going to close the record. For
16 one final time Mr. Osborne, anything further?

17 MR. JACK: Just -- just one --

18 A.L.J. RUSSO: Mr. Jack.

19 MR. JACK: Yes. -- point. I just
20 want to make it clear that you understand what Mr.
21 Bobrow says something would remind me in the parties
22 that the Division doesn't agree for anything to be
23 remanded anywhere and I don't want them to
24 misconstrue that that's something that was agreed to
25 at any point. The Third Department's opinion and

800.523.7887

Associated Reporters Int'l., Inc.

Page 213

1 Metro Enterprises/John Scarfi - 7-15-19
2 audit that he was referring to and saying that there
3 is no reason why something can't be remanded for
4 further review and so that the auditor can look at
5 this. Again, based on the Third Department -- Third
6 Department's audit, there is -- that's not something
7 that the Division would even consider and I just want
8 to make that clear.

9 A.L.J. RUSSO: Thank you, Mr. Jack.
10 Mr. Bobrow, at this point anything further before I
11 close the record?

12 MR. BOBROW: No, Your Honor.

13 A.L.J. RUSSO: Okay. Thank you. That
14 will conclude the matter for John Scarfi and Metro
15 Enterprises. Thank you all for being here.

16 (Off the record, 15:57)

17

18

19

20

21

22

23

24

25

800.523.7887

Associated Reporters Int'l., Inc.

Page 214

1 Metro Enterprises/John Scarfi - 7-15-19

2 STATE OF NEW YORK

3 I, KATHERINE WOLLEBEN, do hereby certify that the
4 foregoing was reported by me, in the cause, at the time
5 and place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 213, is a true record of all
8 proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 26th day of July 2019.

11

12

13 KATHERINE WOLLEBEN, Reporter

14

15

16

17

18

19

20

21

22

23

24

25

A**A-Okay** 119:24

A.L.J 1:17 3:18 6:2,10,17,19,21
 7:3,7,11,14,17 8:11,15,19,22
 8:25 9:4,7 11:5,8,16,23 12:6
 12:13,21 13:6,12,18 15:12,15
 15:22 18:19,23 19:2,8 31:13
 31:15,19 32:25 33:7 50:23
 51:3,5,9,24 52:3,8,13 53:21
 53:25 54:17 56:12 62:4 64:24
 68:11,16,20,23 69:7,11,14
 70:12,15,18 79:18 80:5 81:15
 81:18,21,25 82:9,18,22 83:2,5
 83:9,13,16,18,21 84:2,7 89:2
 91:24 92:3,6,11 95:17,19 98:3
 98:11,15,17,25 101:3,6,8,15
 101:17 103:4,6,8,12,15,20
 105:8,11,15,18,24 106:9,11,18
 106:23 107:10,17 108:2,7,12
 108:23 109:3 119:12 120:10,14
 120:17,22,25 121:7,10,17
 125:2,14,16,19 126:19,24
 130:3,13,17,20 131:20,23
 132:3,6,10,13,19,25 134:9
 137:23 141:8 142:24 143:3,7
 143:13,19 144:2 157:13,15,20
 157:25 158:6,10,14,18 167:23
 170:6 176:15 177:9,13,16
 178:15,18,21 184:5,7 185:6,9
 185:16,21,24 186:3,9,15
 190:12,15,19,24 191:4,7,10,15
 192:15,18,21 198:25 206:21
 207:7,11,15,18,23 208:12,17
 208:23 212:13,18 213:9,13

A.L.J.s 7:19

A.T.M 66:6,7 67:16,19,22,24
 68:6 72:17 86:2,7 90:2,4
 92:17,18,20 93:4,8,9,15,17
 117:3 166:17,19

A.U 32:10**abeyance** 54:7,14,21,23 55:6**ability** 139:17

able 10:17 28:22 29:7 30:14
 45:9 64:18 67:3 71:3 77:5
 126:3,17 127:25 129:18 136:13
 136:19 150:20 152:13 206:10

absence 153:5

absolutely 24:22 57:4 84:5
 85:14 88:2,4 94:8 137:6

absorb 81:10**absorbs** 81:3,10

accept 32:25 62:6,9 68:21,24
 101:8 103:8 105:11 106:18
 107:10 108:7,23 158:14

accepted 11:25 12:8,15,24 13:8
 13:14 70:13 192:12 209:3

access 100:17**accommodation** 150:5 153:3 155:2**accompany** 134:16,16**accompli** 179:12

account 4:20 29:18 67:25 79:4
 90:5 102:8 106:6 111:24 183:2
 183:3 187:4,6,22

accountant 79:7 154:5**accounting** 164:23 211:2

accounts 30:20,21 37:16 38:2
 100:18 107:3 152:5 153:24
 154:12

accts 4:21**accurate** 79:25 133:17 163:12**ACKERMAN** 2:4

act 58:19 59:10 122:13,13
 153:11 163:22 167:19 183:8,14
 183:14 201:19

action 58:25 59:3,9,19 60:5,9
 88:3 114:23 161:10 184:18
 185:15

actions 54:24 55:22 87:24,25**active** 161:17**actual** 110:4,6 111:7

add 61:22,25 63:14,18 65:16
 187:15,17

added 39:22 76:13,14**addition** 37:25 135:23

additional 10:9 14:12,19 15:6,7
 20:14 33:12 37:21 38:4,25
 39:10,19 41:5 43:11,16 45:5
 45:11,20 49:25 104:8 130:10
 174:13 192:11 194:4 198:6
 200:24 206:18

additionally 59:7**address** 17:13,23 128:11 212:3**addressed** 58:7**adequacy** 44:13 129:20

adequate 40:21 44:16,18 46:4,9
 49:12 127:23 131:2,6 133:15
 134:2

administrative 9:18 147:3

admissible 170:10	allegedly 61:9 78:8
admission 14:10 22:14 23:7	alleging 58:18
33:14 38:9 135:15 142:10,13	allow 56:21 104:9 130:20 150:5
142:16 146:2	allowances 97:6
admissions 22:11,16 135:19	allowed 56:18 102:17,20 178:12
141:17 211:25	allowing 102:19 137:12 163:15
admit 5:5,7 101:4 158:2 178:25	165:17 191:11
193:6 197:25 206:23,25 207:8	Alton 147:6,17 156:3 169:16
208:2,5,14	Alvan 8:6
admitted 32:22 56:12 64:19	ALVIN 2:4
103:5 105:7 106:17 107:8	Amazon's 164:14
108:4,21 142:14	amendment 57:17
adult 66:15 84:18 161:17	American 112:3 163:25 164:4,5,7
adverse 60:19	164:8,11,13,13,24
advising 18:14	amount 40:22 46:5 47:7 102:7
affect 61:3 64:16 146:12,14	104:5 136:19,20,20,21 137:11
affidavit 118:19 129:24 130:2,4	137:14,15 180:4 181:4 211:7
130:11	amounts 47:19 136:9
affirm 19:3 52:9 84:3 143:9	amusement 13:24 141:17 142:11
186:11	analogy 66:6
afraid 172:19	analyze 209:20
agencies 85:2 167:14 178:5	and/or 60:21 165:20 197:22
agency 2:8 18:14,16 188:25	answer 4:7,12 12:4,6 13:3,6
agent 17:3 200:8	34:14 36:4 57:5 59:2 62:25
agents 201:17	63:2 74:6 111:16 113:6 129:16
ago 21:23 29:13 139:24 159:5	149:14 150:3 182:17 183:21
161:12,22,24 171:24	212:7
agree 65:2 137:10 147:14 161:2	answer's 95:21
168:9 212:22	Anthony 3:15 24:25 143:12,18
agreed 146:11,24 156:9 171:6	anybody 97:9 113:22 119:25
212:24	166:24,25 194:15
agreement 94:21,23 149:8,17	anymore 104:9 161:25 190:5
177:2,5,20,23 178:8,10 210:19	anyway 49:15 119:25 129:12
211:14,15	apologize 48:2
agreements 15:4 74:11 167:7	appeal 117:21 169:23 174:20
ahead 92:13,14,21 94:4,12 98:25	175:23 176:2
141:6 143:20 186:15	appealed 169:22,23
air 153:14 160:25	appeals 1:2 2:6 11:25 12:24
airline 80:19	52:25 70:5 192:7 204:25
al 58:11	205:10 207:3
Albany 2:9 99:12,18 145:17	appear 126:6 128:9 185:3 196:20
146:6 150:8,11,13 156:19	196:20
176:4 205:3,12	APPEARANCES 2:2
alcohol 117:8	appeared 201:16,25 203:9
alcoholic 66:16 83:3 104:15	appears 126:5 200:6,8
Alisha 138:23 186:25 201:5	applied 43:8 188:15
allegation 64:9	apply 44:25 170:19 171:6 209:10
allegations 61:18	appointment 21:5 138:6 162:9
alleged 63:5	appropriate 10:22 65:5 70:4
	130:16

approximate 36:3	attorneys 84:18
Approximately 28:18	attribute 180:9
April 17:7 159:13 209:12	audience 6:4
arbitrary 153:11	audit 4:15 5:2,11,12 10:15
arbitration 74:10	14:22 17:24 18:6 20:5,14,17
area 53:6 66:24 67:2 194:6	20:17,24 21:12,22,24,24 22:2
areas 25:21	23:21 24:19,24 26:19,23 27:3
arguing 148:2 188:17	27:18 28:8,19 31:2,25 32:3,5
argument 3:19,20 13:20 164:16	32:9,10,16 33:17 34:18 35:2,3
171:3 192:22,23 193:16 203:9	35:6 37:4 38:20 40:14 41:19
203:19 204:3 205:17 209:4,6	44:7 45:22 96:23,25 99:4,8,11
arguments 10:8 63:17 70:7	99:19,24 119:20 122:2,23
192:10,19 193:20 204:11	124:5,17 125:9,12 126:6,15
arranged 145:16	127:5,9,16,19,24 128:6,11
arrangement 30:15	131:8,9 133:6,16 134:13
arrangements 191:13	135:10 138:6 140:16,18,25
art 74:4	141:24 145:4 147:9,15,16,17
Article 1:6,12	147:18 148:13 149:2,5,22
Articles 9:13	150:6,15,15,16 151:20 152:17
ash 173:23	154:9 155:17,17,18 156:3,7,10
asked 49:11 58:4 68:8 93:10	156:22 157:6,7 160:11,13,14
97:9 98:10 129:5 136:17 139:5	160:14,23 168:17 173:23,25
143:22 147:22 155:11 175:15	174:4 176:10,11 179:8,15
184:3 186:19 209:18 211:5	197:4 199:24 204:7,13,16,17
asking 66:9 77:3 79:3 110:4	204:18 209:11,22 210:2,18
111:13 157:3 183:19,20 184:2	213:2,6
Asland 169:8,9 172:8,11,18	audited 17:4 42:22 43:9 145:2,6
173:15,22,25 194:15	145:8,11,12,12,14,15 148:25
assert 61:17	149:4
asserted 75:16	auditing 21:14 38:3 164:24
assess 141:6,13	173:20
assessed 14:6,10 140:13 155:24	auditor 17:5 19:23 20:13 21:5,6
174:2,6,8 194:4	31:11 121:16 122:9 126:17
assessing 148:12 206:16,17,18	127:10 147:17 150:10 201:13
assessment 129:22 145:8 147:5	204:17 209:18 210:3 213:4
147:13 148:19 156:12,14	auditors 20:6,7,11 140:3 147:6
206:17 209:10	199:24 200:10
assessments 64:12 176:3,6,8	audits 20:7 134:14,15 141:25
205:15	155:15 168:15,18
assigned 9:18 118:6	August 12:4,7 13:3,7
Associate 53:7	author 69:20
assume 6:25 179:25	authority 200:19 201:18
assuming 184:20	automatically 17:11
attached 12:22	available 45:9
attempt 40:2 45:7	Avenue 2:5 110:9
attempting 63:8	aware 191:12
attempts 61:14	
attorney 8:6 21:16 24:15 41:9	
41:10 52:22 139:4 145:16	
161:16,23 177:3 204:4	
	B
	B 4:2,6 12:9
	B.C.M.S 147:16,18

back 7:20 18:16 29:23 43:13
 47:15 49:10 51:9,10 77:19
 80:22 81:9 90:6,20 102:9
 103:13 110:2 117:12 120:14
 121:3,4,7 122:16 127:4 130:21
 131:24 134:10 139:25 145:3
 149:12 150:5,11 151:20 153:17
 154:23 159:15 165:20 172:18
 173:23 179:21 192:25 201:8
 210:16 212:8
background 53:11
backs 81:4,11
balances 107:3
bank 4:18,20,23,25 29:6,17,18
 30:11,12,19,21,22,24,25 33:10
 37:5,16 38:2 67:25 74:16,19
 100:18 104:18,20 105:16 106:6
 107:15,21 111:24 114:2 116:12
 139:17 151:17 152:5,24 153:23
 154:10,12 183:2,3 187:2,2,4
bankruptcy 128:10
banks 67:23
bar 25:20 117:8,10 135:21 194:2
 198:7
Barbara 1:17 9:17
bartender 95:11 96:11 102:17
 183:11 187:19
bartenders 95:25
base 10:12
based 33:11 58:2 80:18 81:2
 140:4 146:19 153:14 156:2
 159:19 177:12 179:10 184:21
 193:16 194:23 199:21 205:8
 209:11 213:5
basic 164:23 210:20 211:12
basically 18:10 86:16 100:2
 132:24 140:4 147:24 153:7
 167:13 178:2
basis 31:5 50:15 159:18,19
 200:4,12,22
batch 109:21,24 110:7,13,23
 111:3
bear 10:9 69:11 184:23
bearing 65:9
began 58:15
beginning 75:9 145:5,6
behalf 96:6 148:5 152:15 163:17
 172:15 201:18,19
Behuniak 7:21

believe 31:25 56:8 63:9 70:8
 72:21 79:10 125:21 137:16
 138:13 139:25 141:14 148:17
 156:2 167:12
believed 152:17
believes 210:10
belong 71:7,18 75:2 107:22
 108:16 183:25 196:8,10 199:25
 200:2,2
belonged 71:10
belonging 59:15 107:16
belongs 72:8,20 76:24 78:2
 164:21 167:17,20 195:21,23,25
 196:4,5 197:3
benefit 53:10 153:2
best 21:20 36:4 38:21 41:13
 68:2 72:16 85:2 102:22 107:4
 107:23 108:18 141:18 151:9
 158:22
beverage 27:8 114:2 200:25,25
beverages 14:13 38:9 83:3
 104:15
beyond 72:17 165:3
big 117:23 188:5,5
bigger 136:22
bill 164:11 172:20 182:4
billion 164:2,3,4
binder 75:21
bit 49:6 53:11 81:6 126:2
 144:24
black 109:17
blood 120:21,24
Bobrow 2:4 3:3,5,6,8,9,11,12,13
 3:13,15,16,18,20 6:20,22 7:6
 8:6,6 11:3,7 15:13,14,19 16:5
 31:17 32:24 50:23,25 51:4,13
 52:4,6,15,17 53:19,23 54:3,22
 55:8,16,21 56:24 59:6 61:13
 62:5,17 63:24 64:20 65:14
 68:8,15,18,22 69:2,10,13,21
 70:11,14,17 79:18,20,22 80:6
 80:7 81:13 83:8,23,24 84:9
 93:25 98:3,5,8,14,16,24 99:2
 101:2,5,19 103:7,14 105:9,10
 106:15 107:7 108:6,22 119:12
 119:14,16 120:9,17,20 121:13
 121:14,23 124:24 125:20 128:5
 128:14,25 129:5,24 132:8,12
 137:24,25 138:3 140:24 141:10
 142:22 143:4,5,25 144:2,4,7

144:10 145:15,20 146:20
 157:14,17,23 158:4,8,17,19
 167:22 168:12 169:8,12 170:3
 176:15,17,19 177:11,14,18
 178:16,17 184:7,9,11,24 186:4
 186:6,17 190:11,16,17 191:3,6
 191:12,14 192:15,17 193:6
 194:11 202:14 203:11,15
 204:20 207:6,10,13 208:4,7,15
 208:20 209:4,7 212:13,21
 213:10,12
book 91:8,8 133:11 144:24 174:9
books 17:2 22:5 23:22 24:2,3,7
 25:8 26:24 28:10,12,15 29:3
 29:14 35:15 40:16,17 44:9
 46:2 49:11,19 73:23 74:2,3,6
 78:3,9,13 91:4,13 112:5 113:8
 114:21 129:20 130:25 131:11
 131:12,15 133:15,19,22,25
 153:17 173:24 196:20,21
 201:25 203:23
boss 115:7,19,20,22
bosses 116:21 156:8
bottom 34:17,24 37:17 109:6
 205:20
bought 164:15,15
bouncer 166:23
break 51:2 83:22 120:22 121:4
breakdown 37:3
breaks 198:10
Brett 184:25
brief 83:21 144:18 154:13,25
 165:16 191:16,18,20 199:9
briefing 191:10
briefs 10:9 62:12 63:17 190:25
 191:25,25 193:19
bring 98:22 113:21 115:4 139:18
 139:19 187:6 195:24
brings 184:22
broad 144:15,16 159:20 163:25
broke 126:10 151:13
Brooklyn 147:7
brought 59:5 112:10 165:15
 170:13 171:5
building 2:8 119:4
built 170:15
bunch 145:17 156:23
burden 10:10 188:20
bus 152:6
business 11:22 29:2 32:19 57:21
 65:18,20,21,22,24 66:22 67:17
 67:19,25 80:12,13 89:10,23
 108:15 113:15 155:2,8 163:13
 178:24 180:22,22,22 181:16
 187:13 196:11,13,24 200:15
 201:11
business's 114:7
businesses 57:25 58:3 84:11
 152:4,4 196:22 198:15,21
 201:16 204:5
businessman 18:7
buy 75:22 117:11 136:15,16
 142:14 202:22
buying 166:20

C

C 3:2 4:8 12:15
C-A-P-E-C-I 143:16
C.P.A 144:23 151:22 154:2,3
 163:11
cabaret 152:4
calculator 75:13 77:10
calendar 191:5
call 9:7 18:20,22 19:14,16
 21:21 52:5,7 60:25 71:2 74:20
 81:7 83:22 91:6 97:2 118:9
 120:18 132:3 143:5 145:10
 146:20 150:4 197:2
called 6:6,16,24 54:5 57:10,11
 81:9 129:8 145:7 149:11
 197:23
calling 26:18
calls 80:4 128:17
canceled 79:7 101:13 104:21
 212:10
cancelled 4:16 129:7 147:13
 148:19 151:16,16
candid 77:2
Capeci 3:15 6:7 7:9,16 24:25
 25:2,5 57:8,12 58:18 60:5,11
 65:18 67:17,25 135:12 143:6,7
 143:11,12 168:6 185:7 194:25
 195:14 196:12 197:25 200:21
 202:3 203:17 204:4 210:16,21
 211:2,13
Capeci's 57:21 158:9 203:8
 204:25
caption 209:13 214:5
card 16:20 26:4 29:2,5,20 30:8

30:10,12 31:3 37:16 41:17
 67:12 68:5 75:22 77:13 80:17
 80:22 81:8,22 82:5,6 85:20,23
 86:7,9 89:24 90:5,19 93:8
 95:7,11 96:8,10 97:2,3,10,11
 97:12,18,19 102:4,15 109:21
 110:25 111:19,21 113:23 114:4
 114:12 115:6 124:21 135:24
 136:5,6 140:9 146:13 155:4,5
 165:25 166:6 172:14,14 187:19
 187:20 197:2
cards 67:7 76:13 80:9,14,20
 89:12 100:4 117:10 154:11
 163:16 165:19 166:5,13,22
 187:18
care 181:13 189:3
careful 69:12 92:3
cares 162:25
Carla 148:4
carry 123:12
Carzo 145:17 146:20 147:8 148:7
 149:12,18 156:23 170:17
case 4:15 6:11 16:7,9,13,16,18
 18:18 20:10,22,22 32:2 51:17
 53:12 55:12 56:11 58:10,15,23
 59:7,9 60:13 62:8 65:4,9,16
 87:3,6,8 88:15 112:19 114:20
 117:18 145:11 147:22,22 150:4
 159:18,18,18,20 168:22 169:3
 169:4 170:12 171:10 175:7,9
 175:18 176:21 177:6,25 184:20
 184:22 203:17 204:10 209:8,10
 210:2,8,21 211:22
cases 16:10,16,18,23 20:8,23
 31:8 62:11 65:5 87:7 114:16
 114:18 174:13 178:3 190:7
 204:10 205:15 210:15 211:11
 211:11,23
cash 67:12,20,23 85:16,16 86:8
 90:25 92:25 94:7,9,16 114:10
 115:8,9 116:10,14,15,22 117:9
 146:13 150:22,22 166:4,14,16
 166:19,22 170:25 174:23 197:7
 197:8 202:19,24 203:2
categorically 78:17,24
cause 214:4
cents 35:5 47:5
certain 25:18 27:7 35:15 49:7
 137:10 205:7
certainly 15:25 62:13 67:16
certify 214:3
cetera 53:2
challenges 57:18
change 18:6,9 99:16 150:2
 155:12 156:16 159:7 187:20,22
 194:24 195:9 204:13
changed 100:2 157:4 184:13
changing 193:17
characterization 184:13
characterize 187:10
characterizes 205:6
charge 42:20 81:4,9,9,11 82:14
 82:15 87:13,19,21 90:5,8,18
 90:19 104:8,12 117:4,5 146:2
 164:4,6 198:10 202:12
charged 30:8 73:6,8 135:7
charges 14:10 26:4 29:5,21
 33:14 136:5,6 137:18 155:6
Chase 53:5
check 23:6 25:19 27:8,9 79:7
 85:18,19 102:9 114:11 116:9
 135:19 152:13,19,22,23,24,25
 153:7,11 164:12 198:7,23
 199:5,15
checking 90:4 187:22
checks 4:16 101:14,24 102:10,11
 102:12 104:21 139:2,12 151:16
 151:17 152:7,15,20 153:4
 194:2 200:19 201:7
chef 183:11
choice 73:10 190:9
choose 190:8,9
chose 136:15
Christine 3:4 8:9 18:22 19:7,15
 19:16 31:23 33:9 121:16,20,24
 133:5 160:11 186:19
Cincinnati 53:6
Circuit 117:21
circumstances 146:24 147:9
 156:21 159:19,22 170:20,24
cite 62:12
Citibank 66:6
citing 170:16
claim 64:5,6 73:24 173:7 196:3
 197:9 203:19,22,24 204:5,21
claimed 194:25 195:4,5
claiming 64:2,7 188:12,14 196:4
 196:5 197:12 202:10 203:13
 207:6

claims 55:16 58:21 59:9 195:20 200:12,13 201:19	141:20 147:10 151:21 156:20 158:22,23,24 159:6,7,8,10,11 161:12,13 162:5,5 168:10 172:3 186:22 195:17 198:13 201:2,10,10 202:5,17 209:22 210:16
clarify 6:20 51:21 60:2 74:5 151:6,18 165:13 186:21	clue 100:19
clarity 140:4,6	co- 123:2 153:23 173:25
class 59:3 60:7 64:9 114:22 161:10 184:17 185:15	co-mingle 154:24
class-action 180:12	co-mingled 123:22
classic 145:24	co-vendor 17:3 153:3,7,10,10,12 155:9
clear 56:2 57:5 63:11 72:13 76:3 78:20 79:2 124:14,16 126:9 197:16 205:21,22 212:20 213:8	co-vendors 122:24 153:16
cleared 128:20	coach 170:8
clearly 123:24 124:10,10 138:23 194:20 197:18	coat 23:5 25:19 27:8,10 135:19 194:2 198:7
client 59:6 70:8 145:21 151:25	Cohen 185:2
clients 152:3,10 172:5 204:21	collect 93:22 148:12,21
clip 75:21	collected 148:14 165:2 202:16
close 139:18 192:11 212:15 213:11	collects 163:19
closing 3:19,20 10:8 32:12 149:3 192:10,19,22,23 209:4,6	college 53:5 84:16
club 13:25 14:9,13 17:17 21:25 22:2,9 23:21,23 24:5,16,24 25:4 26:14,21,24 27:6,9,18 28:2,5 30:4,5 33:15 46:13 61:15 63:10 64:2 67:10 72:3 73:21 81:22 83:3 85:15,17,18 85:19 86:25 89:22,22 91:10 93:20,21 95:3,6,8,15 96:4,15 96:17,19,24 97:15 99:6,9 100:3,4 102:2,14,14,22 112:11 117:17 118:10 119:2,3 123:7,7 123:9,21 137:9 138:14,17,25 139:6,19,22 140:3 142:7 144:22 145:6,21 155:20 160:2 162:4,13 168:17 170:14,22,22 171:7,11,11,21 172:4,13,25 176:6 178:9 182:25 187:2,7 194:7,9 197:7,13,19,20,21	column 46:21 47:15
club's 30:12,12 112:22 116:25 117:2,4,5	combine 123:16 140:4
club's 97:18 140:10	combined 37:6
clubs 14:15 21:15 24:4 27:13 29:18,24 30:3,15,18 36:25 37:8,19,21 38:3,7,10,16,18 70:25 89:21 94:20,24 96:14,23 100:22,24 102:24,24 116:4,17 116:22 117:7,24 119:8,9	come 6:8 17:19 24:11 37:14,23 48:7 66:17 74:12 85:17 117:9 117:9 118:2 135:5 146:8 149:23 150:5,12 175:2 191:12 212:8
	comes 18:16 47:17 81:21 85:15 86:18 90:4 111:23 150:7 175:6 175:6,8 209:14
	comfortable 19:14
	coming 6:22 47:9
	commanded 209:20
	commonly 81:4
	comp 188:25
	companies 57:10 67:18 80:22 90:19 123:16,20 124:15,15 151:5 154:8 186:20
	company 67:6 68:3 80:17 81:8 123:25 136:3 165:21
	compared 39:22 41:22
	compensated 187:8
	compensation 185:17
	complaint 59:2,3 63:2
	complete 26:23 68:13 91:13
	completely 76:25 153:18 170:24
	completeness 207:4

completes 13:16	consumers 80:20
compliance 178:6	Cont'g 31:22 33:8 56:24 62:17
complicated 189:16	65:14 68:18 69:2,21 80:7
comply 210:4	92:15 94:5 95:22 99:2 103:25
computation 43:16,19	106:4,25 107:20 108:14 109:4
compute 77:3	127:3 130:24 133:4 134:11
computed 43:7 44:20 51:16	141:10 158:19 169:13 171:8
computer 40:4,6,10 46:14 116:4	177:14,18 184:11
116:6	contacted 156:23
concede 82:23	contained 101:23 203:21 204:22
conceded 113:5	containing 103:18 108:10
concern 128:6	contains 36:9
concerned 100:21 118:15 119:23	contends 14:14
conciliation 10:15	content 107:15
conclude 119:20 213:14	context 74:4
conclusion 10:6 131:4,5 150:12	continue 18:8 62:16 65:11
204:19 205:21	195:18,18
conduct 20:17 21:12 24:19 26:23	contract 66:10,13 68:3 72:2,4,5
27:17 32:16 40:14 44:6 45:22	72:13 78:7 80:12 137:8 163:15
125:8 127:16 134:15	contracted 67:5
conducted 20:18 61:10 65:19	contractor 63:8 87:7
127:5,8 133:6 179:8	contractors 16:16 63:4 64:6
conducting 21:24,25 23:21 28:8	112:15 137:7 160:5 161:14
conducts 204:17	210:17
Conference 147:16,18	contracts 28:20,23 65:22 71:25
confirm 127:25	74:10 78:6
confirmed 62:19	contractual 66:3 113:18 163:17
conflict 59:10	167:3,3 183:4
conflicting 123:23	contractually 203:4
confused 93:7 173:18	controlled 172:11 201:23 202:8
confusing 37:9 38:20 117:7	convenience 172:23
confusions 126:6	conveniently 63:23
conjunction 32:5	conversation 149:13
connect 57:6	conversations 24:14,20 99:17,18
connected 204:5	170:18
Connecticut 52:24	converting 80:9
consents 14:22,24 15:3,5,8	convoluted 145:9
consequences 60:19	cooperation 108:17 138:10
consider 10:17 86:19 90:16,17	copies 11:21 15:24 137:16,19
122:11 142:13 209:9 213:7	192:6
considered 11:4,9 29:4 114:13	copy 16:4 31:17 33:4 69:6 98:9
137:4	110:11 186:4
considers 91:17	corner 109:7
consist 129:21	corp 1:4 9:9 11:24 12:11,14
consisting 214:7	25:10 38:19 57:10,11,22,23
constitute 50:6	61:10 193:22
constitutional 57:19 148:15,16	corporate 100:16 123:14,15
148:17	151:12
consultant 168:20	corporation 11:21 14:7,11,18
	20:25 21:13 24:13 28:9 39:4

40:9 44:7,21,24 50:12 60:12
 126:15 129:23 193:24,25
corporations 172:9 177:2,6
 178:9
correct 6:19 49:17,21 64:25
 70:25 71:18 89:10 90:14,22,25
 94:18,19 110:23 112:5,6 120:7
 122:4 127:6 141:2,5 173:3,7
 174:14 175:7 176:5 179:3
 188:16 208:4 212:3
correctly 18:15 77:10 97:13
 147:4
correspondence 32:11 144:25
cost 80:15,21 136:18
counsel 2:7 7:25 8:3,5 18:4
 128:22 141:4,11 145:19 150:8
 176:21 185:2
country 114:22
couple 29:13 81:19 185:7
course 32:19 82:20 136:23 147:2
 151:19 156:22 166:14,21
 169:16 193:9 194:11 200:13,14
 200:21 204:12 206:3
court 7:22 9:5 17:10 31:8 52:19
 52:25 57:18 59:21 61:7,7,8,25
 61:25 63:20,21 66:14 69:25
 87:13 88:9,19 92:9 95:4
 112:21 117:20,21 118:20
 128:10 142:9 157:9 161:11
 164:16 169:18,19,21 188:3
 191:13 195:6,7 196:3 201:4
Court's 69:6
Courtesy 150:13
courts 52:24,25 54:4,25 62:19
 63:19 161:25 180:15 190:6
cover 12:7 13:3,7 160:14
covered 131:7
covers 90:18
CPA 153:6
create 155:9 161:19 162:11
created 172:9
credible 195:10 205:2,10
credibly 205:11
credit 26:3 29:2,5,20 30:8,10
 30:12 31:3 37:16 41:17 67:7
 67:11 68:5 75:22 76:12 77:13
 80:9,14,16,20 81:8,22 82:5,6
 85:23 86:9 89:12,24 90:3,5,5
 90:19 91:5 93:8 95:7 97:2,3
 97:10,11,12,18,19 100:4 102:3

102:14 109:21 110:25 111:19
 111:20 113:23 114:4 115:6
 117:10 124:21 135:24 136:5,6
 140:8 146:13 154:11 155:5
 163:16 165:19,25 166:5,5,13
 166:22 172:14,14 187:18,19,19
 197:2
Cris 134:14
Cristal 133:7,8 134:14
criteria 160:15,17 210:5
critically 112:7,8
cross 3:5,8,11,16 50:24 51:12
 51:14 59:6 70:21 89:3,5
 101:10,20 126:5 130:5 137:24
 167:25
cross-examination 10:6 70:19
 121:22
cross-examine 121:15
crossover 123:24
crossroads 180:11
crux 53:12 193:21
Crystal 127:11,12
curious 94:14
current 57:16
currently 19:17 20:6 58:8
customer 59:12 67:11 73:12
 77:11,16 81:21 82:12,13,14
 85:14 86:2 87:14 91:19,22
 92:16 93:16 95:11 96:7 110:24
 111:20 145:25 163:3 165:11,11
 166:8,10,15 183:10,12 189:7
 189:21,23 190:7 202:21 210:24
 211:3,5,6
customers 67:2,7,15 68:3 71:3
 72:8,14,25 75:9 76:12 80:15
 89:23 93:14 100:3 102:4,16
 114:3 117:9 164:10,10,21
cut 124:16 152:7
cute 182:5

D

D 3:2,2 4:2,10 12:25
D.O 32:11
D.T.A 9:9
daily 67:24 68:6 72:17
damages 188:10
dance 26:7,10,11 30:6,9,10 31:7
 66:23 73:6,9,19,20 85:22
 117:15 136:4 146:4 149:23
 150:23 159:16 162:12,17,18,20

162:21,23 182:14,16,23 194:21
195:3 197:18 202:19
dancer 23:15 58:17 77:11 85:15
86:5 91:19,21,22 92:22 114:10
136:8 146:3,13 162:18,23
163:4,18 165:5 166:9,16
167:20 182:25 183:4,11 189:8
202:20,23,23 211:3,6
dancers 26:7 67:3,8 71:12,21
73:7 76:24 78:5,11 82:15 85:5
87:8 88:6 89:11,18,20 90:22
91:23 93:22 95:8,25 112:19
115:3 117:9,19 118:17 119:7,9
122:4,12 135:25 145:23,23
146:25 147:5,15,19,23 148:2,7
148:9,20 149:8,24 150:7,12,19
150:21,22 155:25 157:5 159:25
160:19 161:10,14,19 162:2
163:9 165:18 166:13 167:2,2
167:17 169:17 172:15 179:3
180:19 182:23,24 185:2 189:3
196:6 197:10,12 202:16,19
203:3 209:21 210:17
dancers' 91:8 163:20,21 183:7
dances 22:25 62:20 117:11 156:4
156:21 157:8 159:16 162:24
169:25 170:22,25 174:21,23
179:3 194:8 197:19 202:20
206:6
dancing 115:15
data 45:8,10
date 1:16 98:19,21 110:3 175:24
193:12
dated 12:4,7,14,22 13:3,7,13
207:20,21,21,22 208:25 209:2
dates 192:8
day 51:25 81:7 91:5,9 111:3
135:13,14 137:11 146:2 153:8
172:18 209:16 214:10
day's 41:11
daybooks 28:19,19,23
days 146:19 193:11,12
deal 54:12 57:2 59:9 117:23
dealing 54:25 57:13,18
deals 55:23
dealt 16:10
Dean 53:7
December 9:14 158:7
decide 61:19,19 76:7 88:10
175:11 188:3 206:2,5
decided 21:20 150:10,19 169:22
171:20 172:24 174:17 180:11
decides 115:22
decision 10:12 67:17 68:2 112:9
123:20 140:3 141:15 149:23
157:9 159:13 160:12 169:24
170:15 172:23 174:20 184:20
184:21 210:2
decisions 20:13 142:9 179:11
declaratory 60:14
deem 170:21 185:20
deemed 160:19 161:20 164:17
165:9,10 178:10 183:9,13
188:23,24
defeat 206:8
defendants 59:6
deficiency 9:12 156:11
deficiency/revision 1:5,11
definitely 66:12 72:7
definition 6:8 123:5 124:16
161:16
definitions 153:9
demonstrate 198:3
demonstrated 78:10
Dennis 58:10,14,15 59:3 60:7
63:5 64:9 79:5,6
Dennis' 63:2 196:2
denominations 136:12
department 17:9,10,14,19 18:5
19:20,22 20:2 21:10 51:22
53:13,14 59:8 60:6,12,22,22
61:21 75:16 84:21,22 88:10
91:12 112:18 120:2 141:12,19
142:9,19 145:6 146:23 148:11
159:13,15 160:12,15,18 167:18
168:23 173:23 174:24 189:2
203:10 209:12,14,20,25 210:4
210:9 213:5
department's 22:3 59:13 212:25
213:6
depended 159:25
dependent 123:10 164:22
depending 136:20
depends 17:16 159:21
deposit 139:19
deposits 37:5,6,16,19
describe 29:23 71:9 78:17 80:8
124:8
described 16:11 29:8 30:20
49:22 61:5,23 146:24 147:10

<p>160:17 168:16 describes 211:2 describing 78:24 92:11 description 4:3 5:14 desire 68:5 detail 4:21 107:3 detailed 51:15 determination 1:6,12 9:12,19 11:6,22 12:19 40:24 44:13 50:11 63:24 68:9 69:4,25 70:2 70:7 128:2 133:25 146:22 150:17 153:14 193:5 204:14 206:24 determinative 86:23 determine 10:21 14:17 15:6 25:4 25:6,8 28:23 29:8,12,15 30:14 30:24 34:2,6 39:9,18 40:21 41:4 43:16,25 44:12 45:5 46:5 49:24 123:24 129:17,18 133:16 140:2,8 146:17 160:6,6 179:19 194:14 201:21 210:13 determined 29:14 33:11,18 35:16 41:20 42:13,24 45:20 48:23 123:19 147:11 162:2 179:20,21 194:10,13 determines 88:19 determining 69:4 200:4,22 210:5 developed 39:23 41:23 49:9 57:20 development 53:7 174:24,25 Devin 99:18 devoid 209:22 Diamond 123:7 dicta 175:4,11,12,13 194:12,13 dictated 73:18 dictates 73:21 died 173:25 differ 158:23 difference 153:6 different 16:12,14 22:10 33:23 34:11 45:7 57:9,13 58:5,7 65:6 71:25 78:19 89:21 136:3 144:22 155:3 161:8,9 167:14 167:15 170:20,24 172:9,10,17 172:21 178:4,9 193:20 194:6 196:22 204:18 differentiates 16:18 differently 15:16 150:23 difficult 75:12 205:9</p>	<p>DiFiore 7:20 digital 15:25 diligence 64:4 dire 205:6 direct 3:5,8,11,15 19:10 52:16 70:16 84:8 128:24 144:9 157:14 171:11 186:16 directly 72:25 183:9,12 209:15 director 84:15 100:11,15 dis 174:19 disability 188:25 disadvantage 128:12 discretionary 189:22,24 discuss 209:18 212:6 discussed 55:20 73:16 123:18 141:14 145:22 160:18,20 162:7 162:10 170:16 discussing 99:22 165:14 204:6 discussion 130:23 146:5 153:22 169:6 173:19 189:21 discussions 141:3,4 172:18 205:3,5,11 dismiss 88:14 dispel 56:4 dispute 61:12 distinct 128:12 154:5 210:20 distinction 86:20 197:17 198:17 210:15,21 211:12 distinguish 123:21 124:11 distinguished 177:4 distinguishes 211:10,22 distributes 17:17 district 52:24 60:10 61:6,7,24 63:20 87:5,7 112:16 114:17 117:20,22 195:7 division 4:4 9:22 10:2 11:19,24 12:3,5,16,24 13:2,4 14:6,10 14:14,17,25 15:6,7,11 18:21 21:25 25:3 26:23 28:8,16 31:10 32:4,15,18,22 33:25 34:6 35:15 36:10 37:13 38:13 39:2 40:14,17 44:6,9,12 45:25 48:18 49:20,24 50:10 103:3 105:21 106:14,20 107:6,12,25 108:9,20 128:2 129:18,19 131:25 133:11,14 140:16,18,22 174:13 190:20 192:6,13 198:8 198:18 201:14 203:12 204:25 205:9,14 206:13,15,24 207:2 210:3 212:22 213:7</p>
---	--

Division's 12:2,6,9,15,25 13:6
 13:8,14 31:12,16 32:25 103:9
 105:12,23 106:2,8,19,21,24
 107:11,13 108:8,24 191:18
 204:8 207:24 208:24
divvying 172:17
document 5:14 12:11 13:10 31:11
 31:24 32:14 33:4 40:5 68:13
 69:19,23,24 79:11 106:22
 143:23 144:12,14
documented 149:13
documents 9:23,25 10:14 11:10
 11:18 12:17,22 13:17 15:21,23
 32:12 38:8 40:3 78:20,21
 108:16 111:6,14 125:23 126:13
 138:11 151:15 152:14,21 192:2
 192:12
doing 18:8,15 80:16 99:17
 119:24 126:7,10 147:9 165:2
 176:5 199:24 200:11
dollar 37:14,22,23 47:19 50:4
 91:8 93:23 94:16 114:5 136:19
 136:20 137:14 147:5,13 148:19
 156:5,6,14 162:12,13 181:11
 181:12 182:3
dollars 18:17 35:5,17,20 36:7
 37:20 39:8 42:19 43:12 47:4,5
 47:13 48:17,19 49:25 50:5,7
 72:19 73:3 74:25 75:4,8,15
 76:10,11,14,17,22 77:11,14,14
 77:16,19,20,22 78:2,5 79:5,6
 82:2,23 86:4,4,11,14,17,18
 88:6 91:6,7,7,16 92:17,24
 93:17,18,23,24 95:13 102:6,7
 104:5,5,6,10 114:4 116:2,3
 117:6,12 118:10 136:12 146:4
 148:22 155:24 162:16,17,20,20
 164:2,3,4 166:16,18 174:7,8,9
 182:8 194:3 196:7,19 197:6
 198:6 199:7,10,16,18,20
 200:16 201:9,9 202:24 205:25
 206:8
door 22:11,14,16 88:18 135:15
 155:3 166:24 187:2
double 188:9
downfall 177:24
downs 146:3
Doyle 194:19 201:5 202:14
drafted 177:3

dragged 155:23
drawn 66:7
drinks 66:15 135:17
drop 182:3
Duane 85:20 86:7
due 14:5,12,19 15:7 23:11 33:18
 38:5 40:22 43:16 61:17 64:3
 88:20 191:17,18,21 192:8
 193:12
duties 20:4

E

e 3:2,2,2 4:2,2,11 13:8 200:9
earlier 25:18 30:20 33:10 50:5
 50:8 68:8 122:17 125:8 127:5
 127:21 134:22 139:25 154:13
 211:23
early 135:10
easier 11:12
easiest 117:18
easily 63:16 195:15
easy 113:2 193:4
effect 87:25 140:25 159:24
 160:12 211:15
efficient 128:21
eight 9:9,10,10,10 42:11 43:3
 47:4 50:4 174:9 188:5 194:3
 196:7 198:12
eighteen 190:4
eighty 49:2,2 164:2,3,4
eighty- 48:10 49:2
eighty-five 39:8
eighty-one 31:11 37:11 49:2
eighty-seven 48:19 105:22
eighty-six 37:7
eighty-two 49:3
either 10:15 15:8 83:6 97:2
 134:14 161:15 165:9 195:21
 206:16 212:14
eleven 122:3,15
Elizabeth 8:2
emergency 152:19
emphasizes 163:22
employed 19:18 53:3
employee 58:16,22 59:12 63:6,7
 71:10 73:11 94:18 95:8,9
 100:12,15 118:15 151:5 152:20
 163:18 165:6,8 180:25 181:4
 181:25 182:8 183:10,13 188:3
 188:4,8 189:10 198:12 210:22

210:24
employee's 72:16
employees 16:17 57:16 62:20
 63:4,10 64:2,8,10 71:4,8,11
 71:12,13,16,18 72:2,10,14,20
 87:9,20 95:3,7,9,9,15,16,23
 96:2 102:2,21 112:16,20
 114:17 122:5,12 124:14 137:5
 138:14,15,16 160:4,20,22
 161:2,15 162:3 165:7,17
 178:25 179:13,16,23,24 180:2
 180:3,6,13,14,16 184:13,16
 185:12,20 186:20,23,23 187:15
 187:18 188:23 189:3,5 198:15
 200:6,7,18 201:23 202:5
 210:18 211:21
employees' 116:25 163:23 180:9
employer 52:20 59:15 113:4
 165:10 179:3,8,22 180:24
 181:4,12,24 182:9 189:13,17
 201:20 202:6 210:23
employer's 87:12 181:9 182:6
 189:13,16
employment 118:9
employment-related 57:14
employs 71:14
enabling 67:11 68:4
ended 26:18
enforcement 162:22
engaged 145:15
engaging 66:23
enlightened 184:16,17
enterprise 11:24 122:19 153:16
 196:8
Enterprises 1:4 9:9 11:20 12:8
 12:11,14 14:6,11,18 17:25
 18:2 20:25 21:12 24:13 25:10
 28:9,10 40:9,14,18,21 43:17
 43:24 44:7,10,20,24 50:11
 55:2 57:10,11,22,23 58:11,14
 58:17,25 59:4,5,7 60:2,4,5,11
 61:10 66:2 84:14 99:4 100:5
 101:25 107:22 108:16 110:7,8
 115:16 126:15 129:23 138:25
 144:17,17,18 151:8,8,10 159:9
 163:14,16 165:17 167:4,5
 179:2,2 184:2 193:22,24,24
 195:22,22 198:9 199:5,10,22
 200:20,20 202:2,2,10 206:19
 209:13 213:15

Enterprises' 183:3
Enterprises/John 1:1 2:1 3:1
 4:1 5:1 6:1 7:1 8:1 9:1 10:1
 11:1 12:1 13:1 14:1 15:1 16:1
 17:1 18:1 19:1 20:1 21:1 22:1
 23:1 24:1 25:1 26:1 27:1 28:1
 29:1 30:1 31:1 32:1 33:1 34:1
 35:1 36:1 37:1 38:1 39:1 40:1
 41:1 42:1 43:1 44:1 45:1 46:1
 47:1 48:1 49:1 50:1 51:1 52:1
 53:1 54:1 55:1 56:1 57:1 58:1
 59:1 60:1 61:1 62:1 63:1 64:1
 65:1 66:1 67:1 68:1 69:1 70:1
 71:1 72:1 73:1 74:1 75:1 76:1
 77:1 78:1 79:1 80:1 81:1 82:1
 83:1 84:1 85:1 86:1 87:1 88:1
 89:1 90:1 91:1 92:1 93:1 94:1
 95:1 96:1 97:1 98:1 99:1
 100:1 101:1 102:1 103:1 104:1
 105:1 106:1 107:1 108:1 109:1
 110:1 111:1 112:1 113:1 114:1
 115:1 116:1 117:1 118:1 119:1
 120:1 121:1 122:1 123:1 124:1
 125:1 126:1 127:1 128:1 129:1
 130:1 131:1 132:1 133:1 134:1
 135:1 136:1 137:1 138:1 139:1
 140:1 141:1 142:1 143:1 144:1
 145:1 146:1 147:1 148:1 149:1
 150:1 151:1 152:1 153:1 154:1
 155:1 156:1 157:1 158:1 159:1
 160:1 161:1 162:1 163:1 164:1
 165:1 166:1 167:1 168:1 169:1
 170:1 171:1 172:1 173:1 174:1
 175:1 176:1 177:1 178:1 179:1
 180:1 181:1 182:1 183:1 184:1
 185:1 186:1 187:1 188:1 189:1
 190:1 191:1 192:1 193:1 194:1
 195:1 196:1 197:1 198:1 199:1
 200:1 201:1 202:1 203:1 204:1
 205:1 206:1 207:1 208:1 209:1
 210:1 211:1 212:1 213:1 214:1
enters 112:4 113:7
entertainer 30:7 77:17,18,23
 78:3 86:11 87:15 104:7 137:4
 163:15 165:5 206:6
entertainer's 72:24
entertainers 16:15 17:18 28:20
 67:12 72:4,6,23 73:9 75:10
 89:24 113:11 117:25 162:6
 185:3,12 197:3 201:20,24

<p>entertainment 13:24 14:9 45:23 49:12 84:19 125:13 161:17 entire 31:25 49:8 63:12 131:13 131:16 179:13 entirety 74:24 entities 6:23 21:15 27:20 38:20 56:10 57:13,15,17 61:11 65:19 71:21 73:24 100:10,17 122:18 122:24 123:8 125:9 126:14 129:21 145:2,14 150:25 167:15 173:8 198:18 211:16,19 entitled 58:10 139:10 188:14 entity 17:4,17 21:17,21 24:17 25:23 26:16 28:3 41:21 42:5 43:14 124:13 126:7,11 155:21 173:13 195:16 200:15,16,16 201:21 202:7 entries 96:6 151:17 envelope 41:12,12,18 126:14 envelopes 41:11 44:3 126:13 199:25 Eric 7:24 error 39:24 41:23,24 42:10,24 43:2,2,6,25 44:20,25 48:9,13 49:9 206:16 especially 56:14 207:5 essence 58:21 67:10 68:4 Essentially 155:22 esta 195:12 established 211:17 establishment 118:6 123:6 124:2 134:24 195:11,12 establishments 66:22 67:10 81:5 134:23 195:11,13 estate 168:21 169:10,20,21 178:14 estimation 27:17 estoppel 203:9,18 204:3 205:17 et 53:2 58:11 Eureka 102:2 evening 166:15 event 128:25 152:19 174:12 events 152:6 eventually 28:14 147:12 174:17 everybody 72:18 93:18 121:3 126:11 146:11 170:9,16 178:6 181:22 182:11 197:8 202:14 everybody's 53:10 evidence 10:11 16:3 17:13 32:23 103:5 105:7 106:17 107:9</p>	<p>108:5,21 125:25 126:20,21 131:19,21 132:14,22 134:7 140:21,22 151:14 201:13 206:15 evolved 161:22 evolves 193:16 evolving 161:5 exact 33:4 56:10 69:9 152:18 exactly 20:3 22:7 24:11 27:23 59:18 147:8 156:19 159:10 160:3 examination 3:5,5,6,6,8,8,9,11 3:11,12,12,13,13,15,16,16,17 3:18,18 19:10 50:24 51:12,14 52:16 70:21 79:21 84:8 89:5 98:7 101:10,20 119:15 125:5 138:2 144:9 167:25 176:18 178:22 184:10 185:8 186:16 examine 130:5 example 54:4 111:7 145:25 164:2 174:10 exchange 76:8 136:9 197:23 206:4 exclusively 167:20 excuse 10:7 12:23 157:18 excused 52:4 83:10,16 143:4 185:25 186:10 190:15 executed 14:22,24 15:8 executive 86:25 112:11 117:16 exhibit 11:11 12:2,9,15,25 13:8 13:14 31:12,16 32:22 33:2,5 34:16 36:9 68:12,25 69:15,18 70:13 98:12,18 101:14,18 103:3,9,19,21 104:3,4 105:6 105:12,23 106:2,16,19,21,24 107:6,11,13,18 108:4,8,10,13 108:20,24 109:2 125:15 132:16 143:20 157:21 158:2 198:22 199:14 208:25 209:2,3 exhibits 101:4,9 155:11 158:15 exist 27:21 183:22,24 197:24 198:2 exists 60:8 expensive 27:11 experience 141:21,22,23 142:6,8 expert 53:18,19,21 55:11,17,18 56:4,5,6,13,15 61:2 64:17,19 74:5 expertise 165:3</p>
---	--

expiration 104:13
explain 53:10 54:4,13 56:25
 66:12 87:23 95:5 123:2 140:5
 144:11
explained 54:8 205:24
explaining 146:22
explanation 51:15 146:8 150:19
 150:21 199:8,22 201:4
Express 112:3 163:25 164:5,5,11
 164:13,24
Express's 164:8,9,13
expression 16:8 123:14
extend 14:23 15:4
extensions 191:23
extent 15:22 77:3 130:17
extinguished 116:7
extra 102:15
extraction 40:3
extrapolated 39:24 41:23

F

F 3:2 4:13 13:14
F.L.S.A 179:11
facilitate 67:2
facilitates 71:3
facing 177:16
fact 11:9 14:3 16:14 53:17
 55:13 62:20 63:3 64:8 71:24
 95:12 112:10 126:14 140:21
 148:20 169:17 174:3 176:22
 179:13,16 180:16 181:24
 193:15 194:13 201:13 205:4
facts 16:12,12 55:15 65:9 129:3
 129:13 140:21 146:23 147:9
 156:21 159:19,21 170:20,23
 195:8 206:12 211:22,22
factual 56:19 61:18 62:7,13
 64:11 65:3,16 159:18 210:20
factually 56:8 79:25
fail 62:24
fair 58:18 59:10 122:13 167:19
 184:14 185:10
fairly 86:21 152:9 209:8
fait 179:12
familiar 55:4 159:12 168:19
fans 141:3
far 56:22 62:10 71:21 100:20
 118:14 119:6,23 135:13 162:23
 163:3,8 187:24 199:21
favor 187:11,12

faxed 208:7,10
February 1:7,13 9:15,16 131:10
federal 32:12 52:24,25 57:18
 60:8,9,16 61:7 63:20 86:14,18
 87:16 112:24 118:7 163:21
 167:18 179:25 180:5 183:8,14
 188:22 195:7
fee 30:8,9,10,11 75:9,10 77:15
 77:21 80:17 86:3,10 89:25
 90:2,10,17 162:12 164:6
 197:18,20,21,23 202:13,15
 203:3
feel 166:11
feels 195:14 209:15
fees 23:11 26:7,10,11 31:7 73:6
 73:9,19,21 80:17,23 104:15
 112:5 182:14,16 188:10 194:21
 195:3 196:9 197:18
felt 161:13 174:21
fiduciary 113:14,15
field 134:16 150:10
fifteen 136:25 163:6 180:6,7
Fifth 2:5
fifty 121:3 156:5,12 199:16,18
fifty-four 108:11
fifty-one 42:18
fifty-six 47:25
fight 88:16
fighting 196:18
figure 48:4 64:4 87:22 143:22
 193:2 200:5 203:7 205:20
figures 34:18
file 4:15 18:12 32:2 33:17 35:8
 62:25 68:24 107:3 127:24
 207:3
filed 11:4,20 12:4,18 13:4 54:7
 54:13,20,23 55:5,7,8,9 57:15
 58:17,25 59:3 60:2,9 61:13
 62:23 63:19,21,25 64:6 68:13
 87:24 88:14 191:24 192:2,3
 193:6,7,7,9 194:19 202:14
 208:3
files 5:2 125:12
filing 59:4 61:21 191:25
filings 62:22 195:6
fill 180:3
final 12:10 13:9 65:6,7 212:16
finally 17:6 48:7 150:4 212:5
Finance 19:20 84:23

finances 100:19 financial 67:6 100:18 114:5 164:9,20 find 35:24 finding 41:19 189:4 findings 156:4 fine 8:25 52:3 69:13 99:17 finish 150:6 199:19 finished 70:11 95:19 157:14 183:16 first 9:21 10:3 13:22,23 16:9 17:24 18:20 19:24 20:5 21:5 29:23 34:16,23 51:19,23 52:5 53:9 57:17 59:24 75:19 80:16 104:3,4 143:18 149:3,11 160:21 169:11 194:9 208:7 209:9 210:12 212:10 first-hand 56:19 62:16 fit 161:15 five 9:10 20:6 35:4,5 48:7,8,16 48:16 51:6 61:5 79:5,6 80:25 90:18 93:17 102:6 117:11,12 118:10,21 156:7 199:15 five-minute 51:2,10 Florida 52:23 128:10 foggy 154:23 FOIL 160:23 folks 205:12 follow 9:20 10:23 33:6 84:20 86:20 113:2 142:16 follow-up 204:18 followed 10:3 following 10:10 87:10 134:7 food 114:2 200:24,25 footnote 112:11 forbid 152:6 foregoing 214:4,6 forever 155:23 forget 176:2 181:5 forgot 169:11 forgotten 130:22 form 50:14 155:10 181:5,6 former 57:16 58:16 forms 138:24 180:3 forth 201:8 forty 152:11 155:16 166:16 174:8 forty-eight 48:8,17 forty-five 121:2	forty-four 35:3,16,19 37:6 50:6 forty-one 138:24 forty-six 32:11 37:12 forty-three 42:19 forum 59:20 found 38:5 45:12 48:18 150:17 160:21 foundation 144:3 four 5:13 9:10,10 30:17 35:4 36:25 37:4,5,6,16,19 39:7 42:11 43:3,12 76:16 84:25 90:18 94:22 99:12 116:4 119:8 143:20 147:4,13 148:19,21 155:24 156:13,19 157:21 158:2 158:4,15 four-five 99:13 fours 77:24 fourth 117:21 Frank 9:6 168:17 169:12,14,15 169:20 171:10,17 176:6,21 178:7 194:10 203:16 204:9 frankly 148:10 free 57:19 80:19 162:25 202:20 202:20 friend 153:4 169:17 friends 198:14 friendship 152:2 front 45:14 78:18 79:11 111:14 127:24 130:8 135:15,18 full 26:19 147:13 fulltime 53:3 fully 55:4 74:6 168:18 function 29:25 70:24,24 139:15 140:3,8,10 173:12 198:11 functions 57:23,24 65:24 126:7 177:5 198:16 200:8 201:17 funds 210:24 211:3 funny 13:23 16:11,21 17:20 136:9,11 140:15 194:7,8 195:24 further 18:9 50:21 79:17 81:16 81:17 83:5 98:2 103:10 119:10 119:13 123:13 137:21,23 142:25 176:14 178:17 184:4,8 185:5,22 190:11,13,17,20,22 192:13,16 212:14,16 213:4,10 future 138:5
---	---

G

G 3:2 4:14 31:13,14,16,20 32:22

33:2,5 34:16 36:9
G-E-E 7:25
G-R-I-L-L-O 9:6
G.N.H 146:13
Gee 7:24,24
general 67:2 74:14 134:14
 140:15 141:19
generally 10:11
generated 147:25
generic 100:5
Genovese 21:7,8,11,24 23:20
 25:3 26:6,15 134:15 149:6
 152:16 162:8,9
Genovese's 25:22 28:9
getting 95:10 113:11 150:4
 153:16 156:16 181:6 197:11
gift 85:20 114:12
girl 89:22 91:9 102:6 117:6,11
 118:23 119:4 136:14,14,25
 137:2,8 138:22 166:24 190:8
 201:5
girls 89:21 93:16,20,22 116:22
 117:13 136:23 162:15 187:24
 195:23,25 197:19
give 7:22 23:12 31:17 33:21
 36:2 58:12 77:16 82:12,15,19
 86:5,10,11 93:17 98:9 117:11
 117:12 120:13,14 130:9,16
 136:14,14 138:11 150:3,12,20
 153:23 155:7 161:11 162:17
 163:25 166:9,10,11,13,14
 170:5 208:20 211:6,8,9
given 21:19 137:16 166:16
 177:12 199:25 204:24
gives 15:5 163:3 189:7 201:22
giving 15:23 129:25
glad 129:2
gladly 129:13
glasses 98:22
Glen 151:10
Glenn 128:7,7 158:20 159:3
 196:12
go 10:20 27:9,13 28:2 29:23
 40:2 41:13 43:13 47:11,15
 48:4 51:5,19 53:16 66:5 67:23
 68:6 75:22 81:5 82:6 83:18
 84:17,17 86:2 89:25 92:13,14
 92:14,21 94:4,12 95:6 98:25
 108:3 112:16,25 115:7,19,20
 116:12 117:10,18 121:2 135:16

136:13 139:17 141:6 143:20
 145:10 148:24 153:19,21
 162:13 166:22 173:22 179:21
 180:23 181:10 182:2,25 184:21
 186:15 187:23 190:3 191:4
 196:8,19 199:14,16 206:2,5,5
God 152:6
goes 77:16 93:16 100:19 113:16
 136:4 138:9 145:3 166:20
going 6:5,16,24 8:13 9:20 10:23
 15:23,24,25 16:13 17:12 26:20
 27:25 33:3 49:14 51:25 54:3
 55:20 60:24,25 61:3 62:2,6
 63:11 64:15 65:8 68:11,20
 78:8 91:24 92:8,9 95:6 103:17
 104:6 105:21 114:25 118:8
 119:24 123:17 125:11 126:22
 127:4 131:19 132:6,23 134:7
 136:18 139:2 141:8,15 144:3
 168:19 175:20 177:10,11
 179:10,12 180:11 182:20
 184:21 188:23 192:25,25 193:3
 193:4,19 194:24 197:3 198:13
 199:8,19,20 200:5,10 201:22
 205:14 206:2 211:3 212:15
good 16:5 18:25 19:2,12,13 36:3
 51:15 72:18 89:22 104:14
 121:10 168:8 169:17 171:15
 174:10 196:23
government 84:25 85:5 86:25
 87:16 113:17 118:7,13,15
 182:7 188:17,24 189:14
governmental 167:14 178:5
Graduated 84:16
granted 203:24
gratuities 61:16,21 67:3,8 68:4
 71:3,5,7 72:17 73:3,9,15
 182:15 189:10 194:22
gratuitous 211:4
gratuity 59:12 67:12 72:24
 73:14 86:24 87:9,11 88:19
 109:23 112:13 113:3,5,23
 114:14 189:18 190:4 195:2,21
 196:5,16,18 197:24 198:4
great 77:2
greatest 88:4
greatly 161:22 163:22
green 146:13
grilled 146:6

Grillo 8:13,17 9:6
gross 34:25 42:15 48:5,10,11,17
 50:7 87:12,14 112:12,21 114:6
 114:13 165:12 173:4,16 180:8
 180:8 183:5 189:13,17
guaranteed 148:25
guess 27:14 95:5 113:19 142:15
 161:5
guy's 154:16
guys 89:21 93:15 165:13

H

H 4:2,16 101:15,16,18 103:3,4,9
 103:13 198:22 199:15
half 110:11 137:2
hallway 6:6
hand 19:3 52:9 59:13,14,17,17
 60:15,17 76:4 84:3 85:19,21
 103:13 105:12 109:7 143:9
 167:16,17 177:12
handed 76:12
hanging 69:14 103:21 106:2
handle 72:11 86:23 209:17
handled 71:22 155:18,21
hands 146:3
handwritten 28:19 29:4
happen 78:8 102:18,19,20,23
 117:15,16,16 129:15 188:7
happened 85:20 102:3,13,22
 149:22 155:22 194:23
happening 161:6
hard 16:4 80:23 92:9 178:5
harmony 162:11
Hart 87:4
head 74:13 77:4 138:19,21
 146:21 148:4
hear 9:18 129:8 157:23 193:19
heard 124:18 153:15 164:16
 175:23 198:9 211:24
hearing 4:8,13 10:13 12:12,13
 13:10,12 52:18 54:7,23 61:23
 125:21 128:21 130:7,9,11
 190:25 191:15 214:8
held 29:21 31:3 54:5 148:2
 164:17
help 138:15 186:23
helping 138:14
helps 158:23
hereof 214:6
hereto 214:5

hereunto 214:9
hey 88:15 155:4 162:16
Hi 121:24,25
high 81:2
higher 48:12 137:15
hired 161:16 171:21 202:7
history 53:11 161:11
hit 93:25 94:2,3 152:6
hitting 92:4
Hodgson 145:21
hold 31:7 54:7,21,23 55:6
 107:19 123:20 132:13 141:15
 146:25 188:9 198:8 205:10
holder 81:8
holding 160:22 205:15
Holdings 99:9 155:13
holds 142:10
Holland 138:23 186:25 201:5
honestly 119:5
Honor 50:25 51:13,21 53:20
 54:15 56:9 70:11 81:14,20
 83:17 98:6 101:2 103:7 121:14
 125:20 128:5,14 132:8 137:25
 142:22 190:18 192:17 209:7
 213:12
honored 104:12
hooked 154:12
hope 130:15 177:11 193:2
hopefully 34:13 38:22 77:9
 164:11 203:6 205:19
host 96:11 166:23
hour 118:10 137:2
hours 201:22
housekeeping 206:22
hundred 31:10 35:4,5 39:7 42:18
 46:8 47:4,4,12 48:16,17,19
 76:16 77:11,14,15,19,22 81:25
 82:23 84:14 86:3,4,10,17
 91:16 92:17,24 93:18,24
 101:13 102:11 104:5,6,10
 105:22 107:14 108:11 116:2,13
 117:11 162:19,20,24 166:18
 181:11 182:4,8 188:14 189:6
 199:6
hundreds 197:6 201:8
hustler 87:3

I

I.D 21:19 38:3 123:8
I.R.S 91:11,14,17 97:5,11

<p>115:12 119:19,20,23 120:4 189:25 190:2 iceberg 193:15 idea 72:9,13 93:19 identical 99:10 100:2 identification 31:12,16 68:12 98:12,18 101:13,18 103:17,21 105:22,25 106:8,21,24 107:13 107:18 108:10,13 125:12,25 132:2,15,23 143:20 identify 126:23 143:23 identifying 57:6 II 19:23 illegal 102:18 115:8,13 illegally 167:6 immediately 152:7 implement 85:2 implication 193:8 important 51:17 84:24 86:20 112:7,8 importantly 17:7 impossible 182:2 impression 16:9 in-charge 150:9 inaccurate 64:21 inadequate 29:5,15 39:25 40:25 44:17 49:20 include 32:3 62:25 87:12,13 114:13 included 32:8 43:19 87:14 117:14 130:7,9 165:12,22 173:4,16 183:5 includes 11:21 12:19 including 37:8 168:16 211:11 income 16:22,24,25,25 17:2 86:15,18 164:3,19 165:22 179:25 189:11 202:11 incomplete 27:3 Incorporated 45:23 171:12 incorrect 184:19 incorrectly 147:4 increased 43:10 incredible 205:8 incrementally 80:21 incur 96:13 incurred 82:14 incurs 80:15 independent 16:16 63:4,7 64:6 87:7 100:21,23 112:15 137:7 160:4 161:14 210:17</p>	<p>independently 139:13 140:7 indicate 206:7 indicated 110:22 135:6 indicates 72:7 individual 30:5 38:3 41:16 159:18 204:4 206:9 individually 35:25 individuals 7:22 201:16 individuals' 165:22 industries 84:19 industry 85:7,8 91:18 115:13 161:18 influential 154:7 information 16:2 20:15 21:19 24:12 25:5,9,23 26:10,16 33:10,11 41:7 48:6 49:7 56:8 106:6 107:15 123:23 135:6,13 185:4 203:20,23 204:22 informed 24:16 25:2 26:3 initially 24:8,25 25:7 28:14 179:14 inquired 26:7 ins 172:13 insisted 168:23 instance 97:17 123:7 instruct 170:6 instructed 62:5 instrumental 154:7 insurance 185:17 integral 27:19 70:24 71:2 interaction 85:13 interest 68:2 72:16 100:12 151:4 interested 62:13 65:9 interestingly 62:24 interests 100:7 interfere 92:8 interject 56:2 91:25 interlocking 211:19,20 internal 32:12 84:20 interpleaded 59:7 interpleader 58:25 59:2,4,8,19 60:4 87:24,25 167:10,12 188:18 interwinds 86:22 intimate 154:8 introduce 9:22 investigation 58:3 65:20 involved 17:16 20:10,16,24 21:2 25:24 26:16 30:3 76:13 127:15</p>
---	--

127:17 144:13 155:14 156:25
 161:7 168:9 178:5 203:16,18
 205:5
involvement 20:21
issue 13:19,22 14:2,3,20 15:2
 15:10 18:3 35:12 53:12 54:9
 57:3 86:22 91:16,19 112:10,14
 117:17 120:8 144:15 145:22
 146:10 149:23 150:7 159:14,16
 160:18 169:18,19 180:17
 184:25 185:11 186:19 193:21
 193:25 198:5 204:9 209:8,15
 210:9
issued 12:20 50:10,18 99:15
 116:8 129:22 150:16 176:3,10
issues 11:22 15:11,16 18:4
 56:19 62:14 64:11 91:23 99:22
 99:23 144:24 147:14 178:4
 205:21 206:11
issuing 205:15
it'd 63:20
it's 153:16 175:14
items 14:13 76:4

J

J 4:19 105:23,24,24 106:2,9,16
 106:19
Jack 2:8 3:3,5,6,8,11,12,16,17
 3:19 6:15,18 7:11,13 8:4,4,12
 8:17,21,24 9:3,6,21 11:15,17
 11:19 12:3,10,16 13:2,9,15,16
 13:22 15:12 16:6 18:19,21
 19:9,11 31:9,14,18,21,22
 32:21 33:3,8 50:21 53:16 54:5
 54:18,19 55:4,10 60:24 62:21
 64:25 65:3 70:18,20,22 79:16
 79:23 80:3 81:16,17 83:7,12
 83:15 89:2,4,6 92:13,15 94:5
 95:22 97:25 101:6,7,10,12,16
 101:21 103:2,5,10,16,25 105:3
 105:6,21 106:4,10,13,16,20,25
 107:5,8,12,20,24 108:4,9,14
 108:19,25 109:4 119:10 125:2
 125:4,6,15,18,24 126:22 127:3
 128:13,16,24 129:11 130:5,12
 130:15,19,24 131:22,25 132:5
 132:17,21 133:4 134:6,11
 137:21 140:20 142:21,25 143:2
 143:21 151:14 152:14 156:24
 157:19 158:10,12 167:23,24

168:2 169:13 171:8 177:8,10
 178:19,20,23 184:4,6 185:23
 190:12,14,20,22 191:2 192:13
 192:14,19,20,24 199:3 206:21
 207:5,17,19,25 208:6,11,18,22
 210:10 212:2,17,18,19 213:9
Jack's 125:21 212:7
Jane 116:3,5,6
January 98:19
Jenifer 127:11
Jennifer 3:7 21:7 52:7,12,21
 62:18 64:20 65:15 68:19 69:3
 135:11 161:9
Jersey 94:25 102:25
Jessica 102:2 198:24,24
job 139:15
Joe 145:17 146:20 147:8 148:7
 149:12 156:23
John 1:10 3:10 8:8 9:8 12:17,22
 13:8,11,13 50:18 83:24 84:6
 84:10,13 87:23 93:25 98:9
 99:7,19 100:6 119:17 151:9
 152:23 154:6,12 155:11 167:4
 167:5 169:7 171:21,25 176:7
 186:6,8,14 188:6 193:22
 194:14,20 213:14
John's 153:4
journal 151:17
judge 6:7,15 7:13,20,21 8:12
 9:18 11:15 13:17 15:11 31:9
 31:21 32:22 33:6 53:16 55:10
 60:24 62:21 70:20 76:7 79:17
 80:3 81:17 83:7,8 88:9 89:4
 98:2 101:12,14 103:3,11,16
 105:4 106:14 107:6,12,25
 108:20 117:20,22 119:11 125:4
 125:11 128:13 129:15 134:6
 137:22 140:20 142:21 143:2,21
 157:24 158:13 167:24 170:11
 174:19 175:11 176:14 177:8
 185:23 190:14,22 191:2,3
 192:14,20,25 206:20 207:5,17
 208:19
judgment 5:9 55:6 60:14
juice 117:8
July 1:16 98:21 129:6 207:24
 208:2,25 209:2 212:9 214:10
June 11:25 12:14,23,24 13:13
 193:7,8,9 207:20,21,21,22
 208:3,13,19

<p>jurisdictional 9:22 11:18 12:11 12:17 13:10,17 jurisdictions 65:6 justice 169:24 justifying 201:6</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>K 4:21 97:9 106:21,24 107:8,11 K-I-N-S-L-E-Y 52:22 KATHERINE 214:3,13 keep 16:15 33:2 72:14 90:24 91:2,3 93:3,5,10,11,13,14,20 94:6,8,15,16 139:8,8 155:6 180:18 202:19,25 keeping 144:24 keeps 41:11 75:8,17 76:15 77:20 85:16 193:17 Kennedy 198:24 Kentucky 53:4 kept 91:4 149:24 157:3 key 16:14 176:22 kind 177:11 Kinsley 3:7 52:7,11,12,21 Kline 145:20 knew 171:24 know 7:10,10,12 9:5 25:12,15 26:12 27:5 45:13 66:4,18 71:22 94:11 95:8 97:5 99:12 102:6 107:18 110:2,19 111:10 112:7,12 113:13 117:24 119:3 119:6 123:5,13 124:16 127:8 134:23 136:19 137:13,17 138:7 138:19,24 139:9,11,23 140:10 140:14,15 141:21 142:19 144:12,23 148:20 149:9 153:25 154:4,8,9 155:13 156:25 157:8 160:10 162:5 165:25 171:13 174:3,5 177:3 179:19,20 181:12 187:15 188:2 189:21 193:15 200:4,11 204:6 205:4,8 209:20 210:12 211:4 212:3 knowing 160:13 203:14 knowledge 56:20 57:21 62:8,16 65:3,10 73:24 102:23 107:4,23 108:18 141:19 151:9 154:9 158:22 165:23 181:23 182:9,11 knowledgeable 159:5 181:24 known 81:4 151:22 152:11 154:6 168:12 170:2 knows 55:15 66:14 85:5 170:9</p>	<p style="text-align: center;">L</p> <hr/> <p>L 4:22 107:13,18 108:2,4,8 L.L.C 125:13 labor 53:13 58:18,19,19 59:10 59:11,16 60:15,22 61:12 84:21 84:22 86:21 122:13,13 163:22 167:18,18,19 183:8,14 210:25 Lace 38:13 45:10,23 46:2,5,8 48:23 49:12,16,23 100:11,13 125:10 133:6,12,15,16,20 135:3 151:2,11 153:20,20 193:25 195:22 200:2 202:2 lack 140:4,5 landlord 137:9 language 140:25 159:24 lap 194:8 laptop 15:21 large 145:7 larger 58:24 211:8 Las 84:17 lasted 99:11 Lat 194:15 late 175:23 193:11,12 lately 92:12 law 1:7,13 9:14,18 20:24 52:23 53:2,4,5,8,8 56:23 58:19 59:11,16,17 60:15,16 84:22 86:22 87:16 114:14,21 118:11 149:25,25 153:5,10,15 178:2 178:11 179:25 180:5 184:22 187:23 188:2,21,22,22 210:25 laws 161:22 lawsuit 58:17 59:25 60:9 161:10 180:12 184:18 185:15 lawsuits 57:7,13,14 161:8 lawyer 148:16 lawyers 114:23 lay 144:3 lead 126:14 leader 19:24 leases 161:18 leave 102:5,6,16 139:7 146:5 181:11 210:2 led 25:10 ledger 74:21 ledgers 74:15,16 leeway 126:3 left 8:17 76:22 86:8 100:10 114:4</p>
---	---

legal 54:9 56:7 58:24 70:7
 74:11 116:14 123:5,13 181:22
 188:10 210:9
legally 117:6
length 170:17
let's 22:13 33:22 43:13 75:14
 77:12 91:6 112:25 118:4 123:7
 129:8 145:5 182:12 212:10,11
letter 12:7 13:3,7 18:7,9 129:6
 145:3 147:24 149:3 155:12
 156:16 158:4,6,9 203:10,12,21
 204:22,23 205:7 212:9
letters 149:14
level 150:9 152:17
liability 29:9 30:24 51:16
 194:17
liable 85:4
license 178:12
licensed 52:22
licensure 56:3
life 88:5 188:25
light 209:25
limit 67:16 68:6 166:19
limitation 15:4
limitations 14:23
limited 166:25
limits 67:24 72:17 191:24
line 19:24 20:5 65:5 102:15
 104:8 109:25 110:5,10,13,15
 111:2,4,7 144:6
lines 89:9 140:12 186:21
liquor 22:19,20 140:11 172:20
 172:20 178:2,11
list 52:24 74:21 155:6
listed 43:14
listen 84:18 119:25 154:23
listing 60:3
literally 136:6
litigated 114:22 203:16
litigating 203:12 205:14
litigation 56:10 58:5,8 203:16
 203:18
litigations 54:9,12 57:2,2
little 23:6 37:9 45:6 49:6
 51:20 53:11 54:20 112:11
 126:2 139:24
live 52:20 84:11
lived 187:2
lives 139:18

LLC 127:6
LLP 2:4
loan 96:25 97:2
loans 96:22
local 53:24 56:5,6,14
locate 36:12,13
located 144:22
location 104:13
locations 66:21
long 8:25 19:25 52:24 85:6
 148:24,24 149:4,12 154:6
 168:10,13
longer 21:9 40:4 171:20
longstanding 57:7
look 22:23 33:20 34:15,16,23
 40:6 42:6 43:24 46:16 61:13
 62:22,22 69:5 74:8,14 78:3,9
 78:14 89:21 109:16 119:22
 122:5 127:23 128:6 155:12
 162:19 166:3 175:14 191:5
 193:2,14,16,18 196:2 203:21
 213:4
looked 35:15 40:9 46:12,15
 73:23 74:7,9,10,10,11,17,19
 74:20,22,23 124:3 151:15
 160:15 173:24
looking 16:2 20:14 22:2 25:3,11
 26:9,24 27:17 36:25 45:12,18
 46:11 49:4,13 69:9 78:21
 168:8 170:4
looks 47:24 109:21 179:11
 208:12
lose 114:23,25 189:19 190:10
loss 16:22
lost 54:20 152:22 178:13
lot 38:20,21 41:16 60:3,7
 123:24 128:19 135:12 138:20
 141:25 151:14 152:10 210:15
 210:16
lots 65:19
love 114:23
loves 86:25
low 80:25
lunch 120:19 121:5,11 151:14
 181:10 182:3
Lyons 8:2,2

M

M 4:24 108:10,13,20,24 109:2
M.L.B 17:4 38:13,24 39:2,4,5,10

39:12,16,17,20 40:9,14,17,21
 41:15,19 42:5 45:8 49:23
 57:10,23 60:2,3,10 66:2,10
 67:5 71:15 72:2,6 81:10 85:13
 100:8 115:16 118:17 124:5,6,8
 125:10 127:17 135:2,11,11
 138:22 144:16 145:13 151:2,8
 153:21 154:4 155:17,21 156:6
 165:20 166:4 172:4 179:2
 193:23 195:21 196:21 198:20
 199:5,9,13,15,21 200:2,7,9,20
 201:19 202:2
M.L.B.'s 67:14 153:19 200:7
Macalusio 147:7
Macalusio's 156:3
Macaluso 99:13
machine 66:6,7 67:19 82:6 86:2
 90:2 93:4,8,9,16,17 117:3
 126:10,11 135:24 155:6 198:10
 198:10 205:24
machines 67:9
Macy's 164:14
mailing 212:3
maintain 72:2,5,6
maintains 14:25 15:7 96:5
majority 30:21
making 20:13 102:19 124:19
 181:20 192:19 200:12 203:10
management 18:5 20:15
manager 115:21 136:17 139:22
mandatory 73:19,20 190:3,4
Manhattan 59:19,22 60:10 61:8
 63:21 118:20 195:6
Manian 148:3,5
manner 156:20
Marcello 211:13
Marcelo 145:11,11
March 1:7,13 9:15
Marchello 168:17,20,22 169:3,15
 169:20,20 170:19 171:10,17
 172:23 173:2 174:10,17 175:2
 175:7 176:6,21,22 177:4,25
 178:7,7,13 194:10,14 203:17
 204:10 211:11,12
Marchello's 169:11
mark 11:11 31:15 68:11 98:11,17
 101:17 126:21 132:15 145:20
 208:23
marked 4:2 31:12 69:18 107:17
 132:4 143:19
marking 98:19,20 103:20 105:25
 106:23 108:12
Martians 160:5
MasterCard 112:3
matches 91:10
math 75:11 77:2
mathematical 77:4
mathematically 86:16
matter 1:3,9 9:8,19 10:2 12:8
 12:12,14,22 13:7,11,13 21:3
 54:21 55:6 56:11,20 63:13
 87:16,20,20,21 114:14 146:16
 169:16 183:10 194:16 213:14
matters 56:7 57:14 61:6 159:3
 204:7
maxed 86:7
meal 181:11
mean 20:17 21:2 23:11 25:13,16
 25:21 27:6 28:7 29:12,12,23
 29:25 35:2,14 38:14,16 39:19
 41:24 43:24 46:18,24 53:17
 54:19,20 55:10,16,25 60:20
 61:12,17,23 62:21 71:6,7 74:5
 75:11 76:5,6 79:3 90:24 95:24
 103:17 119:24 126:10 140:5
 143:23 168:23 172:2 173:19
 174:12 175:3,11 178:20 183:17
 193:8,15 195:2,11,14 196:9,23
 197:24 199:19,21 200:11,14,18
 201:18,19 206:11,17 207:20
means 64:14 77:21 110:20 136:22
 173:18
meant 18:7
measuring 199:9
mechanism 70:6 115:2
meet 128:16,18,25 129:11 191:22
meeting 129:6,7,7 145:16,20,22
 145:24 146:11,19,25 147:11
 148:6 150:8,13,14 192:8
 205:12 212:6,10
meetings 21:16 176:4
memo 4:8 125:22 130:7,9
memorandum 14:21 17:7 209:14
memory 136:18
mention 174:22 199:7
mentioned 27:7 174:23 206:22
merchant 111:24
merely 153:2
merge 124:9

merged 124:5
messed 188:7
met 128:22 134:18 188:24
method 46:10 49:15 146:12
methodology 20:24 49:5
methods 49:22
Metro 1:1,4 2:1 3:1 4:1,20,21
 4:23,25 5:1 6:1 7:1,9 8:1 9:1
 9:8 10:1 11:1,20,23 12:1,8,11
 12:14 13:1 14:1,6,8,11,15,17
 15:1 16:1,22 17:1,3,24 18:1,2
 18:6,10,11 19:1 20:1,25 21:1
 21:12 22:1 23:1 24:1,12 25:1
 25:10 26:1,2,3,3,25 27:1 28:1
 28:8,10,13,17,21,24 29:1,16
 29:18,24 30:1,15,19 31:1 32:1
 33:1,10,12,18 34:1,2 35:1,8
 35:11,16 36:1 37:1,2,10,19
 38:1,2,17 39:1 40:1 41:1,16
 41:19 42:1 43:1,15 44:1,24
 45:1 46:1 47:1 48:1 49:1 50:1
 50:11,18,19 51:1 52:1 53:1
 54:1,11 55:1,2 56:1 57:1 58:1
 59:1,5 60:1,6,21 61:1,10 62:1
 63:1 64:1,12,16 65:1 66:1,2
 66:10 67:1,6,9 68:1,3 69:1
 70:1,24 71:1,17,20 72:1,5,20
 73:1 74:1,24 75:1,3,7,8,17
 76:1,9,10,13,15 77:1,13,15,20
 77:20,22 78:1,5,10 79:1,4,5
 79:24 80:1,8,10,12,13,14,15
 80:22 81:1,3,10,23 82:1 83:1
 84:1,14 85:1,11 86:1 87:1
 88:1 89:1,9 90:1 91:1 92:1
 93:1 94:1 95:1 96:1,6,16,20
 97:1 98:1 99:1,4,5 100:1,5
 101:1,24 102:1 103:1 104:1,23
 105:1 106:1 107:1,16,22 108:1
 108:16 109:1 110:1,7,8 111:1
 112:1 113:1 114:1 115:1,23
 116:1 117:1 118:1,3,16 119:1
 120:1 121:1 122:1 123:1 124:1
 124:6,7,19 125:1 126:1,15
 127:1 128:1 129:1,22 130:1
 131:1 132:1 133:1 134:1 135:1
 136:1 137:1 138:1,15,17 139:1
 139:2 140:1,2 141:1 142:1
 143:1 144:1 145:1 146:1 147:1
 148:1 149:1 150:1 151:1,2,10
 151:16 152:1,18 153:1,19,21
 154:1,6 155:1,21 156:1 157:1
 158:1 159:1,9 160:1 161:1
 162:1 163:1,11,14,15,18,19
 164:1 165:1,3,17 166:1 167:1
 167:4,5 168:1 169:1 170:1
 171:1 172:1 173:1 174:1 175:1
 176:1 177:1 178:1 179:1 180:1
 181:1 182:1 183:1,3,4 184:1,2
 185:1 186:1,22 187:1 188:1
 189:1 190:1 191:1 192:1 193:1
 193:22 194:1,4,20 195:1,23
 196:1,20 197:1 198:1,8,11,12
 198:16,20 199:1,12,20 200:1,2
 200:6,8,8,23 201:1,20,21
 202:1,10,16,21,25 203:1,4
 204:1 205:1 206:1,19 207:1
 208:1 209:1,13 210:1 211:1
 212:1 213:1,14 214:1
Metro's 26:5 27:16,18 28:25
 30:10,11 77:15 106:6 107:2
 152:15 183:5,6
Metro's 140:8
metropolitan 53:6
microphone 92:7
middle 46:20 91:11 150:18
midnight 137:15
midst 150:15
might've 159:4
Mike 99:13 147:6 156:3
million 18:17 35:4,16,19 36:7
 37:7,11,14,19,22,23 39:7
 42:18 43:12 49:24 50:4,5,6
 72:19 73:2 74:25 75:4,6,8,15
 76:10,11,14,16,21 79:5,6
 147:5,13 148:19,22 155:24
 156:14 174:5,6,7,8 194:3
 196:7 198:6
millions 88:6 196:19
mind 10:10 16:15 192:12
mine 91:7 170:24
mingling 153:24
minimum 112:22 118:12 162:12
 189:25 190:6 196:15 197:14
Minnesota 161:16
minute 21:23 34:9 37:7 88:16
minutes 29:13 51:6 61:5 121:2,3
 136:25 163:6
mischaracterized 184:15
misconstrue 212:24

mistake 85:3 178:7
mister 130:11
misunderstood 75:7
mix 168:6
mobile 82:7
model 57:22 65:20,24 178:24
moment 83:19 91:25 130:8 191:5
money 13:23 16:11,21 17:20
 59:11,14,14 60:22 71:9,17
 72:11,22,24 81:6 85:16 86:19
 86:23 88:7,11,11,12,17 89:16
 89:17,23 90:4 91:10 93:15,21
 95:13 97:15,16 102:5,7,8,9,16
 102:19,21,21 111:23 112:4,9
 112:10,12,22,23 113:7,16,19
 113:20 114:7,8 115:7,23 116:6
 116:24,25 117:2,2,4,5,7,14
 136:10,11,11,22,23 139:18
 140:15 152:22,24 153:19,21
 154:5 155:7 163:19,19,20,21
 163:23 164:13,14,14,15,17,22
 165:2,9,24 167:6,13,17,19
 172:10,21 180:19,24 182:24,25
 182:25 183:6,7,7,8,9 187:3,6
 190:10 194:7,8 195:25 196:4
 196:24 197:5,9,13 199:12
 202:17,21,25
moneys 198:20
monies 71:22 87:11
monopoly 136:11
month 164:12
months 40:11 47:18,25 97:5
 149:2
moot 146:11
morning 16:6 18:25 19:2,12,13
 57:9 121:19 122:17 151:13
 208:16,21
motion 5:9 11:5 54:7,14,21,23
 55:5 61:13 62:25 63:24,25
 68:9 69:4 88:14 193:5 204:15
 206:24
motions 11:3 62:23
move 65:12 101:3 130:5 157:19
moved 129:13 157:16,20,25
moves 32:22 106:16 107:6,25
 108:20
multiple 99:12 195:13
music 66:17
mystery 165:24

N
N 3:2,2 4:2 5:2 125:16,17,18,19
 132:2,4,7
nails 67:21
name 7:23,24,25 9:5,17 21:19
 38:19 52:21 58:13 84:13 91:9
 100:2,5 116:3 128:7 138:16,18
 138:21,22 139:12 143:15,18,24
 144:5 158:9 169:11 178:13
 186:20 214:10
named 7:7
names 38:16 138:20 145:18
 151:12
Nancy 125:19
nature 28:25 53:25 146:15
necessary 20:15 33:17 67:14
 130:18
need 16:4 28:2,4,5 56:3 67:15
 74:5 122:5 145:10 152:7,12,22
 191:12 202:18 209:9
needed 21:21 28:6 30:13 136:15
needs 96:9
negotiated 73:11,13
neither 17:3
never 73:8 85:5 86:18 112:4
 113:7 114:23 116:25 137:5
 146:17 147:15 148:9 149:2,14
 149:16 150:14,17,18,20 152:23
 152:25 160:18 161:8 164:16
 169:18 173:24 183:5 184:3
 187:13 188:24 189:2 196:20,20
new 1:2 2:5,5,9 6:13,13 7:19
 19:19 30:15 37:3 53:13,14
 58:19 59:10 84:21,22 86:21
 87:5,8 94:22,25 102:24,24
 118:7 119:8 122:13 145:3
 146:21 148:4 167:14,15 174:25
 177:25 178:11 209:13 214:2
night 110:18 111:3 115:5,6,10
 115:18 116:20,23 117:13 153:7
nightclub 66:19
nightclubs 66:15
nine 43:14 47:25 101:13 102:11
 138:23 199:6
ninety 77:23 78:2,4,4 86:14,17
 95:13 117:5
ninety-four 48:8,16 103:18
 104:18
ninety-nine 91:17,20,21 97:9

ninety-six 48:2
non-alcoholic 66:16
non-party 6:5,8,11,14
non-script 146:10
non-taxable 145:23 147:19
Nonie 148:3,5
noon 137:14
normal 32:19
Northern 53:4
note 7:20
notes 129:19
Notice 4:8,13 5:5,7 11:22 12:12
 12:13 13:10,12 193:6 206:23
 206:25 207:8 208:2,13
notices 12:19 50:11,15,18
 150:16 207:20 208:5
notified 152:16
notion 56:4
November 46:24 47:2 191:21
number 6:3 21:19 34:25 37:14,18
 37:20,20,22,23 47:3,6 48:6
 57:13 58:11 77:12 109:6,12,18
 116:3,5 124:18 146:7 152:2
 161:7,8 181:5,6
numbered 36:16
numbers 9:9 35:2 50:3,6,14 77:4
 98:13,15 123:8
NYS 2:6

O

o 3:2,2 5:3 43:3 132:3,16
 134:10
o'clock 121:4
oath 51:11 121:18
object 60:25 170:14 209:25
objected 147:24
objection 32:24 62:4,21 80:3
 101:6,7 103:2 105:3 106:13,15
 107:7,24 108:6,22 125:20
 126:25 128:5 132:9 140:20
 142:21 177:8
objections 10:18 32:21 65:2
 103:6 105:8 107:5 108:20
 132:18 158:11,12
objects 133:2
obligate 167:3
obligated 203:4
obligation 128:9 183:4
observation 58:3
observations 58:2

observing 7:19
obtained 33:10
obvious 63:25
obviously 160:9 198:11 204:16
occasionally 84:22
occur 66:24,25
occurred 46:13 150:14 195:10
 204:24
October 47:2 191:19
odd 161:12,22
offer 11:20 12:17 31:10 56:8
 64:18 67:3,7,11 71:3 76:6
 101:12 103:17 105:21 106:21
 108:9 131:19 132:2 134:7
offered 27:6 105:23 132:11,20
 132:22
offering 125:24,25 126:20
 131:20 132:20,22,22
offers 12:3 13:2 107:13 126:25
 127:2 132:14
office 2:7 7:24 8:2,4 18:4
 128:22 137:19 138:6 141:4,11
 145:19 147:7 149:7 150:8
 207:14 212:2
officer 84:15 100:8,11,14 151:4
 151:7,10,11
officers 52:19 211:20
offset 112:22
oh 8:19 18:16 34:22 64:4 69:7
 73:13,17 76:10 83:11 91:24
 92:2 94:3,11 106:10 148:13
 149:7 152:15 159:20 169:24
 171:15
Ohio 52:23 53:3
okay 6:18 7:6,14,16 8:11,14,22
 8:24 9:7 11:16 13:18 16:5
 18:23 22:15,18 23:20 25:17,25
 28:7 32:14 33:20,24 34:19
 35:22 36:18,21,24,25 37:7,13
 39:3,15 48:4 52:3,13 56:12
 59:23 68:16 69:17 70:12,18
 71:16,20 72:18 73:5,22 75:24
 77:25 78:23 79:15 80:6 81:18
 83:2,5,9,13,16 84:2,7 85:10
 90:7 92:21 94:10,14 95:2 96:3
 96:12,19 97:25 100:6 101:8
 103:8,12,23 104:17 105:11,20
 107:12,19 109:19 110:10,14
 115:11 116:8,18 119:10 120:9
 120:10,25 121:10,17 123:12

126:24 131:18 132:5,12 133:24 134:6 137:21 138:11,13 141:7 142:4 143:7,13 144:15,21 145:4 149:10 150:11 151:20 154:22 157:12,15,17 158:14,18 170:8 171:9,13 173:22 175:9 175:16,19 176:13,13 178:21 181:18 182:12 183:23 185:6,24 186:4 190:19,24 191:4,10,16 192:18,21,24 204:24 207:11,12 207:18 208:11,17,23 212:14 213:13 old 150:4 170:22 181:6 omitted 63:23 once 30:4 63:12 82:13 154:18 192:11 ones 74:12 95:15 167:2 193:20 196:13 ongoing 54:8,24 open 10:7 62:11 150:15 opened 161:12 opening 3:3,3 13:19,21 15:16,18 16:6 99:3 138:5 210:14 operate 66:15 147:10 158:24 174:2 178:8,12 196:13 201:10 operated 14:14 186:22 operates 65:21 85:11,12 196:11 200:17 operating 99:9,9 122:18 172:24 177:2,4,19,23 178:8,10 187:15 195:17 211:14,14 operation 73:25 99:14,15 156:17 198:12 operational 124:7 operations 24:16 135:13 195:19 opine 64:25 65:7 opinion 56:17,22 61:2 62:6 64:14,17 76:6 80:4 117:19 169:25 174:21 212:25 opportunity 9:25 17:19 88:5 121:15 125:22 129:25 210:4 opposed 64:10 67:12 123:22 124:20 opposite 195:3 option 67:16,17 order 17:8,9 26:19 38:22 79:12 123:15,16 149:3 162:11 187:5 209:14 ordered 147:8	organized 163:14 Oricchio 128:7,8 130:12,13 151:10 158:21 196:12 origin 72:12 original 40:3,5 49:10 145:4 148:6 155:16 171:18 originally 21:4 145:14 Osborne 2:8 8:4 64:21 156:24 207:15 212:16 outcome 65:7,8 outline 9:20 outlined 60:15 outside 6:4 7:2,4 164:16 outsider 172:12 overall 21:20 overnightened 208:8,10 oversee 20:7 overseeing 20:13 owe 18:17 88:12 owed 28:24 29:16 58:22 116:2,2 owes 33:12 79:4 115:23 owing 60:21 owned 145:2 172:5,5 173:14 owner 6:23 41:10 93:20 113:15 144:16,17 145:9,13 147:20 151:7,9,11,21 152:7 154:4 171:18 owners 155:2 211:20 ownership 100:7,12 151:4
<hr/>	
P	
<hr/>	
P 3:2 5:5 53:5 209:2	
P.C 6:22	
P.C.S 168:17 195:15	
P.O.S 46:19 135:20	
Pacific 99:6,8,20 100:2 155:12 155:20	
packet 103:18 105:23 107:14 108:10	
page 4:18 31:11 34:16,17,24 36:16,19,22 37:17 38:11,12,15 42:6,12,14,25 43:13 44:19 45:11,19 46:11,16,21 47:9,11 47:15,17 48:14 49:2 104:3,4 105:22 106:22 107:14 109:5,6 109:8,9,11,13,15,18 122:3,15 199:15,17 214:5	
pages 4:21 5:4 36:15 49:2 101:13 102:11 103:18 104:17 108:11 214:7	

paid 26:7 46:5 58:22 59:11 72:7
 72:14,17,24 73:9 79:5 85:24
 87:15 91:11 112:20 113:22
 115:3 116:9 124:15 146:13,16
 146:17 150:21,22 156:13
 165:10,11,25 183:9,12 187:13
 189:12,16,17 197:5,15,18
paint 61:14
painted 200:10
paper 82:5,8,17
papers 32:12 36:9,13 42:2,4,4
 43:20 48:3 63:19,21 201:4
 202:13
Paradise 145:7 174:5,5
parenthesis 38:12
part 7:12 11:4,9 16:25 20:19
 31:7 59:2 65:17 89:15,16
 124:8 125:21 141:12 148:8
 166:5 167:11 171:2 173:15,16
 185:14 206:23 207:2,2,3
participated 69:18
particular 24:24 25:11 56:14
 65:4
particularly 122:3
parties 17:16,16 54:11 58:11
 60:3,7,8 169:10 191:22 192:5
 192:19 210:8 211:21 212:21
partnership 172:8
party 6:14 7:4 9:24 54:11 55:2
 59:8 60:4 67:5 83:6 147:21
 153:3,12 169:4,21 172:12
 175:18 192:3,7,7,9 212:14
pass 82:16
passed 80:21
patron 30:6
patrons 23:12 73:6,8,9 111:19
 135:7 180:20
pay 13:24 14:9 23:8,10,15 33:14
 35:11 67:23 75:3,7 80:16
 85:15,17 86:3 89:24 91:15
 97:15,16 114:10,11,11 116:22
 137:10 139:6 150:9 164:12
 167:13 172:19,22 189:10 190:9
 194:21,22 196:15,15 197:7
 198:20 202:22 203:4 206:6
paying 30:7 74:24 91:21,22
 185:16 199:9,12 200:6,15
payment 90:16 91:18 93:6 113:2
 114:9 146:12 156:5,6 198:23

payments 93:13 96:13,15,16,17
 96:20 111:19
pays 85:16 92:22
pen 75:12,21
pending 58:8 59:19 62:10 105:19
people 6:3,16 7:18 27:9,13
 65:21 66:17 75:2 81:5 113:24
 139:7 141:3,11 145:17 156:23
 163:10 164:4 167:4 170:18
 173:20 190:5 195:17 196:17
 197:18 203:13 205:6
percent 46:8 75:8,10,17 76:15
 77:7,9,21,23 80:25 81:2 84:14
 86:3,10,13,16 88:8 89:25 90:2
 90:10,12,18,19 104:7,11 117:3
 117:4 164:6 180:7 188:14
 189:7 190:4 202:11,13
percentage 43:11 188:11
perfectly 99:17 116:14
perform 198:15
performances 23:12 66:23
performed 197:19
performers 63:3 66:22
performing 67:4 85:25 126:7
 200:7 201:17
performs 70:24
period 1:7,13 31:2 35:12 37:4
 49:7,8 76:13 96:23,25,25
 113:3 131:7,9,13,16 133:17
 144:18 147:25 148:11,13,25
 149:5,6 154:13,16,19,24,25
 157:7 165:16 179:13 180:17
 185:11,18
periods 9:14 61:3
person 14:7 50:19 55:11 77:2
 80:11 102:9 130:2 139:15,21
 166:2 201:6 202:6
personal 65:10,19 151:24
personally 57:12,15,25 85:4
persons 14:19
perspective 67:14
pertains 6:15
petition 1:3,9 4:5,10 7:15 9:11
 11:20,23 12:5,18,21 13:5
 14:20 194:19,20 195:4
petitioner 2:3 6:11,12 10:11
 15:9 17:8 18:13 63:6 206:14
petitioner's 10:4 63:23 68:12
 68:25 101:9 143:20 191:16,20

petitioner's 5:8,9 158:15	212:15,19,25 213:10
petitioners 8:7 15:9 54:22	points 10:10 80:19 81:3 201:13
62:24 63:3 64:10 160:2 193:17	policy 87:18,19 140:17,22,24
195:9 209:15,24	141:5,13,19 142:11,12
petitions 9:8	pools 172:21
pgs 4:20	poor 170:13
phone 85:23 128:17 146:20	pops 110:25
149:12,15 156:25 157:2 170:17	portion 26:5 73:5 164:20,21
170:18 171:5	182:13,15 183:2 196:5 197:22
phonetic 8:9	198:3
phrase 15:16	position 10:2 22:3 51:18,20
pick 85:20 157:8 187:6	59:13 60:21 63:9,11 84:24
picked 29:5 31:2	140:16 204:8
picking 37:25	possible 26:22 198:2
picture 21:20 26:19 27:4	post 190:25
piece 59:25 82:5,8	posture 61:6,24
pieces 58:8	pots 172:10
piercing 123:14,15	power 21:16 24:15 41:9,10 139:4
place 78:11 79:8 95:4 118:5,24	practice 52:22 53:2 115:13
118:25 141:17 142:11,11 205:3	144:23 155:8 196:24
205:12 214:5	practicing 53:8 151:22
places 67:20 196:19 202:8	practitioner 53:2
plaintiffs 209:21	pre- 14:9
playing 66:18	pre-dated 160:13
pleading 58:12	precedential 112:17
pleadings 74:11	precise 77:3
please 10:9,19 11:17 13:19	predecessor 18:2,6,10 99:5
15:17 18:20 19:3 31:21,24	144:19,20 145:8 155:20 172:4
36:17 45:4 47:23 51:2 52:5,8	predecessors 195:16
52:14,18 83:25 95:20 98:14,16	preface 57:5
101:5,14 103:13 105:13 108:25	prefers 120:20
109:5,11 120:15 121:13,18	premises 200:17
126:25 141:5,9 143:8,8 170:6	preparation 69:19
209:5	prepare 69:3
plenty 182:17	prepared 32:4,15,18 55:9,24
Plunkett 99:13 147:6,17,22	prescribed 191:25
169:16 174:3,4	present 9:25 10:3 11:10 16:13
Plunkett's 156:3	33:4 82:10 125:12 203:23
plus 188:10	205:16
pocket 86:8 182:6	presented 10:12,16,24 195:9
point 10:24 11:16 17:2,22 37:22	presenting 190:25
37:23 38:8 40:2 42:11 43:3,12	PRESIDING 1:17
45:7,9,12,21 46:12,14 48:10	Prestige 171:11
48:11 49:6 65:8 73:16 96:23	presumption 59:11 113:4
104:9 111:6 121:5 124:7 125:3	pretty 41:20 161:25 162:13
125:17 129:12 130:22 133:3	172:24 184:22
135:16,17,20,22 144:18 146:6	previous 147:20 174:4
147:25 148:23 150:16 152:18	previously 10:14 68:16 99:23
161:3,14 165:8 168:14 170:10	price 136:25 137:3 162:23 163:2
175:20 192:24 203:6 210:12	163:4,8

prices 162:6
primarily 57:14
primary 27:14 119:7
principal 57:9
print 102:15
prints 116:4
prior 16:10,15,18 31:8 99:4,8
 99:24 139:4 142:9 179:11
private 22:24,25 23:8 30:6,6
 104:15 136:4
privy 15:25
probably 45:14 66:14 123:5
 171:13
problem 178:3 198:14
procedural 15:20
procedures 9:20 10:23 11:2,14
 147:3
proceed 19:9 52:13 84:7 143:13
proceeded 128:21
proceeding 7:5,8,12 58:24 70:9
proceedings 10:16,19 62:3,19
 214:8
process 21:17 80:22 89:11
 163:16
processed 26:3 72:23 75:22
 167:6
processes 80:14
processing 67:6 75:9 77:15
 80:17 89:25 90:2 124:21
 135:25 140:9 165:19 172:15
 197:2
processor 164:17
professional 53:7 56:3 152:2,10
 159:2
professor 53:4 56:3
profit 16:21 93:22
proof 10:10
proper 40:22 46:5 62:9
properly 14:6,17,24 15:8
property 72:15 87:15
proposed 129:3,13
prove 188:20,22
provide 23:25 30:19 70:6 118:16
 180:3 210:24
provided 29:3 44:3 49:20 124:12
 127:23 129:20 130:25 152:14
 193:20 206:15
provides 29:19 67:9
public 62:11 63:16 66:24 67:2,4

pull 164:8 172:21
pulled 160:25
pulling 211:15
pulls 177:5
purchase 16:20 83:3 136:10
 160:7 194:8
purchased 135:7
purchases 81:25 96:7 135:25
purely 189:22,24
purpose 69:22,24 104:14 115:25
 167:9,11 177:22 206:9
purposes 31:16 68:12 98:18
 101:18 103:21 105:25 106:24
 108:13 132:16 206:22 207:4
put 16:3 17:12,18 48:12 51:19
 51:23 60:21 67:19 68:4,10
 81:8 118:4 130:6 149:16
 151:14 157:2 158:21 165:21
 166:3 185:4 187:5 207:16
puts 110:24 182:5
putting 201:8

Q

Q.E 46:17,20,21,23
qualification 55:17
qualified 56:15 64:17
qualifies 55:11
quality 55:14
quantify 80:24
quarter 38:6,7 39:21,23 40:12
 40:13 41:4,8 42:16,16 44:4,4
 46:22 48:20
quarters 47:19
question 14:16 15:20 17:18
 33:23 34:14,23 36:4 49:10
 57:6 58:6,9 59:16 60:25 76:2
 76:9 80:4 95:20 98:6 103:24
 105:19 106:6 109:2 110:15
 113:6 119:14 129:15,16,17,25
 130:21,22 133:2,2 138:10
 141:9 144:16 170:23 179:17
 183:20,21 184:3 195:13 197:17
 199:23 204:23 209:19 210:7
 211:5
questioned 25:22 139:3
questions 10:22,23,25 11:13
 50:21 56:18 62:15 65:11 79:17
 81:14,19 83:14 88:23 94:12
 98:2 103:11 107:19 119:11
 124:25 126:2,17 132:24 134:13

137:22 142:23 143:21 158:16
176:14 178:17 184:4 185:5,7
186:7,21 190:11,14

quite 81:6 144:23 159:5

quote 114:18 153:15

quoted 117:19

quotes 117:21

R

R 3:2

raise 14:20 19:3 52:8 70:8 84:2

112:14 117:17 126:25 143:8

148:16 177:12

raised 15:2 18:3 58:9 164:17

raising 18:3

ran 159:7,8,11 171:7

rang 170:25

rate 39:24 41:23,24 42:10,24

43:2,2,6,25 44:20,25 48:9,13

49:9 171:9

re- 156:22

re-call 186:6

RE-CROSS 178:22

re-determination 9:11

re-direct 79:19,21 98:4 176:16

176:18

re-tried 169:22

reach 204:18

reached 166:19 204:19

read 98:10 130:21 139:25 149:25

156:10 177:10 184:22 199:4

reading 48:3 122:2 124:4 142:9

160:13

real 155:8

really 16:7,20 18:7 27:21,21

47:16 100:19 113:24 123:9

124:10,14 138:12,19 161:15

166:12 167:20 189:15 193:21

198:5 201:11 209:9,19

reason 27:15 39:24 54:8 96:12

96:13 123:18 142:18 149:17

152:18 166:6 180:18 191:23

198:19 199:22 200:15 213:3

reasonable 150:21 200:4,22

205:18

reasonably 203:20 204:21

rebuttal 113:4

recall 21:11 122:7,21 138:5,11

139:21,23 176:22,23,24,25

177:15,19

recalled 121:20 186:8

receipt 82:5,10 91:5,10 102:4

102:15 109:20 110:6,25 111:8

111:9 114:8,9 164:20 179:23

205:25 206:3,3

receipts 16:19,24 26:11 31:3,4

41:12,13,15,15,15,16,17,19,21

42:16,22 44:3 48:5 61:15

76:11 87:12,14 112:13,21

114:6,13,24 115:24 120:5,6

136:7 141:16 171:3 173:5,17

174:6,6,8 180:8 183:5 189:13

189:17 194:10 196:7 198:4

199:25 203:13

receive 28:12,16 49:8 100:15

111:18 131:15 133:15 163:9

165:18 206:24 207:6,7,13

212:2

received 11:24 12:23 18:6 25:22

28:19 40:20 41:18 44:4 49:6

133:22 145:7 160:23 166:2

180:4 182:24 192:9 196:25

197:20,22 207:9 208:16 211:25

receives 71:17 162:24 182:2

202:23

receiving 126:12 180:19 203:11

recess 51:10 121:11

recognize 166:7

recollection 49:18 159:24

recommended 161:18

record 7:17,23 10:20 11:4,9

15:24 22:5 51:6,8,9 57:5

62:11 63:12 68:10,24 70:15

78:20 79:7 82:2 83:19,20

101:9 103:9 105:12 106:12,19

107:11 108:8,24 121:2,6,8,12

130:6,23 151:3 157:21 158:2

158:15,22 183:17,19 184:25

185:4 191:5,9 192:11 193:2,13

197:21,24 201:24 202:4 207:2

207:16 208:24 211:18,24

212:15 213:11,16 214:7

recorded 42:23 46:14

recording 92:8 139:11

records 4:23,25 23:22 24:2,3,7

25:8 26:25 28:10,13,15 29:3,8

29:14 35:15 39:25 40:10,17,20

40:25 44:10,14,16 45:13,21

46:2,4,8 49:11,12,19 63:16

68:21 73:23 74:6,7,8,20,23

78:3,9,13 79:4 91:4,13 112:5	relationship 57:8 65:25 113:18
113:8 127:22 128:3 129:20	122:12 151:24 159:9,25 160:3
130:25 131:12,12,15 133:12,15	163:18 167:3 201:11 209:21
133:19,22 134:2 153:18 173:24	release 187:3
174:10 181:14 182:13,17	released 156:13
183:18,21,22 184:3 201:25	relevance 55:19 62:3 95:12
203:23 207:4	148:8
Recross 3:6,12,17 138:2	relevant 55:3,18 56:7,20 129:17
redeem 82:10,13 115:3 116:19	reliance 205:17,18
117:14	relied 123:9 203:20 204:22
redeemed 90:13	rely 204:25
redeeming 115:9	remainder 196:10
redeems 77:19 82:16 86:13	remaining 7:18
redemption 75:10 77:21 202:13	remains 204:23
redetermination 1:5,11	remand 210:2
redirect 3:6,9,12,13,13,16,18	remanded 212:23 213:3
98:7 119:15 125:3,5 184:10	remarks 16:6
refer 11:12 15:21 33:2 89:11,20	remember 28:16 49:6 136:19
119:9 195:15	138:21 139:13,14 145:18
referenced 63:16	151:12,21 154:14,21 171:12
referral 89:13 90:16,17 202:15	175:24
203:3	remembered 211:13
referred 41:25 79:23 99:4 175:4	remind 51:11 75:25 212:21
194:12 202:16	reminded 91:14
referring 11:6 89:17 90:22	reminder 91:14
213:2	remitted 42:20
refers 54:5 193:6 203:22	removed 174:9
refresh 159:23	remuneration 100:16
refund 1:6,12 9:12 203:22	rent 137:11
refundable 104:11	rentals 25:20 38:9 135:21
refused 88:17 156:24,24 185:3	repeated 38:14
196:14,15 205:5 210:11	rephrase 141:9 176:24
regard 24:12 44:13 49:23 53:22	reply 191:20
56:19 62:15 65:11 89:13 96:10	report 25:19 32:4,9,10 39:2
130:14 194:2 198:6 203:9	97:10 109:22,24 110:7,13,23
205:2	122:23 124:5 128:7,11 160:11
regarding 10:22,25 11:13 62:14	160:13,14,14,23 179:15 180:10
65:4 125:8 129:19 134:13	181:4 182:10 209:11,22 210:18
regardless 192:8	reported 16:24 35:2 38:10 40:22
regards 128:3	42:10 43:8,8 45:2 47:8 48:9
register 18:12 38:5,6 39:21	48:12,16 97:13 133:16 165:20
42:17 99:20 135:15 170:25	214:4
registered 209:22	reporter 7:22 9:5 51:7 121:9
regret 81:7	143:14,17 191:13 214:13
regulation 91:20	reporter's 92:9
regulations 58:20 190:2	reporting 39:23 41:22 48:13
Reid 85:21 86:7	165:24 180:13
relate 54:9	reports 157:6
related 6:23 14:3 17:4 56:9	represent 56:9
58:5,20	

representation 65:18 170:13
representative 24:21,24 134:19
 155:19
representatives 15:9 146:7
represented 57:12,16 80:11
 145:19
representing 9:21 145:21
represents 60:7
request 10:8 23:22 28:10 40:17
 44:9 46:2 99:20 128:16 130:10
 131:12 133:11,19 160:23
 191:24
requested 40:16 131:11 212:6
requests 10:20 191:22
require 182:9
required 128:19 129:10 180:2
requirement 180:21,24 181:23
requirements 84:19
reschedule 129:8 212:10
research 20:14,24
reserve 51:14,22
resolving 60:14
respect 57:17 119:20 140:17
 186:23 187:15
respond 193:10
responded 63:6,22 193:11
respondent's 51:18
response 12:5 13:4 63:22,23
 64:5 193:10 206:25 207:8,24
 207:25 208:13,25 209:2
responsibility 113:14,16 166:2
 181:9 182:7 191:21
responsible 14:4,7,19 50:19
 113:10 147:21 153:3,12 169:4
 169:10,21 175:18 179:23
 181:25 192:5,8 193:23 194:16
 198:9 200:23 201:15
responsible-party 177:25
rest 7:21 51:25 75:25
restaurant 82:7 113:23,25
 180:23 190:3
restaurant's 187:22
restaurants 67:20 155:4
restrictive 183:15
restroom 83:22
resulted 129:21
retroactive 188:4
return 86:15 128:17
returned 192:3

returning 121:11
returns 18:12 32:13 35:9 74:9
 86:18 100:18 103:14
revenue 16:19 22:11 34:13 84:20
 164:8 165:4 210:22,23
revenues 22:22
reverse 198:21 200:21
review 20:8,10 22:5 38:5 45:21
 63:12 122:9 124:10 125:22
 175:15 213:4
reviewed 39:21 44:5 69:17
revision 9:12
rewards 80:19 81:2
Richard 101:25 198:23
Rick's 117:18 134:15
Ricks 87:4 127:11,13 133:7
Ricks' 133:8
right 19:3 29:22 34:15 36:15
 38:14 45:14 47:10,14 52:8
 57:19 61:16 68:17 69:10 75:14
 76:18,23 77:4,24,25 84:3,13
 88:13,13 99:7 111:16,23
 112:16,25 117:18,22 120:2,25
 124:4 126:19 132:25 143:9
 144:5 159:4 173:10,11 175:20
 185:14 190:8,24 207:25 209:3
right- 109:6
rights 118:6,8,9 148:18
risk 81:3,11 90:3
road 136:16
role 27:18,19
roof 124:2
room 7:18 8:23 25:20 30:7,8,11
 38:9 57:8 93:18 104:15 135:21
 136:4,7,21,22 163:7 206:5
rooms 22:24 23:9 66:25 67:5
 136:22 140:11 163:5
roughly 32:7 49:25 76:16,22
round 77:12
rule 10:19 65:2 112:24,25 113:2
 133:3
rules 70:2,6 85:3 87:10 91:15
 128:19 212:11
rumor 148:18
run 67:6 77:13 85:22 86:9 95:3
 97:21 136:2 155:5 156:21
 171:21 172:13 187:18
running 67:18 141:24 159:6
 201:8

runs 16:21 30:10 95:11 111:20
187:19,19,21
Russ 145:21
Russo 1:17 6:2,10,17,19,21 7:3
7:7,11,14,17 8:11,15,19,22,25
9:4,7,17 11:5,8,16,23 12:6,13
12:21 13:6,12,18 15:12,15,22
18:19,23 19:2,8 31:13,15,19
32:25 33:7 50:23 51:3,5,9,24
52:3,8,13 53:21,25 54:17
56:12 62:4 64:24 68:11,16,20
68:23 69:7,11,14 70:12,15,18
79:18 80:5 81:15,18,21,25
82:9,18,22 83:2,5,9,13,16,18
83:21 84:2,7 89:2 91:24 92:3
92:6,11 95:17,19 98:3,11,15
98:17,25 101:3,6,8,15,17
103:4,6,8,12,15,20 105:8,11
105:15,18,24 106:9,11,18,23
107:10,17 108:2,7,12,23 109:3
119:12 120:10,14,17,22,25
121:7,10,17 125:2,14,16,19
126:19,24 130:3,13,17,20
131:20,23 132:3,6,10,13,19,25
134:9 137:23 141:8 142:24
143:3,7,13,19 144:2 157:13,15
157:20,25 158:6,10,14,18
167:23 170:6 176:15 177:9,13
177:16 178:15,18,21 184:5,7
185:6,16,21,24 186:3,9,15
190:12,15,19,24 191:4,7,10,15
192:15,18,21 198:25 206:21
207:7,11,15,18,23 208:12,17
208:23 212:13,18 213:9,13

S

S 3:2
safe 139:20 197:7 201:10
sale 13:23 14:8,12 16:11,25
17:11,15 21:18 22:12,19,20
23:7,13 25:21 26:4 27:6 31:6
33:12,18 34:5 35:20,23 36:15
37:10 38:2,8 40:2 45:7,9,12
45:21 46:12,14 48:10,11 49:7
54:6 70:23 71:17 75:16 76:2,8
79:24 123:10 135:16,17,20,22
140:9,23 141:16 142:10,12
168:23 174:14 175:10 194:5,7
196:25 202:12 205:22,23
206:16,18

sales 1:6,12 9:13 13:25 14:5
17:12,15 19:23 22:24 23:18
25:19,20 29:21 34:2,3,5,25
35:8,11,16,17,22 36:14 37:21
38:4,10,25 39:10,10,19,19
41:5,14 42:10,19,22 43:8,9,9
43:10,11 44:25 45:5,12,20
46:5 47:7 48:8,10,11,17 49:25
50:7 53:23,23,24 54:12,25
55:23 56:13,14,23 57:3 58:6,9
59:15 61:9,11,17 64:12 71:17
72:20,21 75:15 86:24 87:19,21
88:12 113:14 123:21 124:2,11
124:19 140:19 145:3 146:9,21
147:5 148:12,14 155:24 156:14
159:4 164:24 167:7,15,16
188:15,17,19 194:2,4,18,18
198:6 200:25,25 210:6

Salmon 53:5

sandwich 182:3

sat 162:15

satisfied 211:7,9

saw 42:17 79:3 138:23,25 154:10
180:18

saying 43:2 54:10 63:6 64:21
65:2 73:3 76:2,15 79:13
100:20 124:5 149:24 157:5
163:25 166:9 167:13,16,19
174:25 189:6 213:2

says 18:16 34:17,25 37:18,21
46:17,21,23 72:10 78:7 79:4
87:13 91:5 104:5,10,16 110:7
114:3 118:10,11,13 162:18
189:15 190:2 201:24 202:5,15
203:17,25 210:5,18,25 212:21

Scala 3:4 8:9,9 18:22,25 19:6,7
19:12,15 51:14,23,24 121:16
121:20 149:6 152:16 153:13
162:8 163:5 166:6

Scala's 160:11

scantily-dressed 27:15

Scarfi 1:1,10 2:1 3:1,10 4:1,10
4:13 5:1 6:1 7:1 8:1,8,8 9:1
9:8 10:1 11:1 12:1,17,18,20
12:22 13:1,8,11,13 14:1,7,12
14:15,18 15:1 16:1 17:1 18:1
19:1 20:1 21:1 22:1 23:1 24:1
25:1 26:1 27:1 28:1 29:1 30:1
31:1 32:1 33:1 34:1 35:1 36:1
37:1 38:1 39:1 40:1 41:1 42:1

43:1 44:1 45:1 46:1 47:1 48:1
 49:1 50:1,18 51:1 52:1 53:1
 54:1 55:1 56:1 57:1 58:1 59:1
 59:5 60:1,6,20 61:1 62:1 63:1
 64:1,13,16 65:1 66:1 67:1
 68:1 69:1 70:1 71:1 72:1 73:1
 74:1 75:1 76:1 77:1 78:1 79:1
 80:1 81:1 82:1 83:1,24 84:1,5
 84:6,14 85:1 86:1 87:1 88:1
 89:1,7 90:1 91:1 92:1 93:1
 94:1 95:1 96:1 97:1 98:1 99:1
 100:1 101:1,22 102:1 103:1,22
 104:1 105:1 106:1,5 107:1,2
 107:21 108:1,15 109:1 110:1
 111:1 112:1 113:1 114:1 115:1
 116:1 117:1 118:1 119:1 120:1
 120:11,20 121:1 122:1 123:1
 124:1,20 125:1 126:1,8 127:1
 128:1 129:1 130:1 131:1 132:1
 133:1 134:1 135:1 136:1 137:1
 138:1 139:1,3 140:1 141:1
 142:1 143:1 144:1 145:1 146:1
 147:1 148:1 149:1 150:1 151:1
 151:9,23 152:1,3 153:1 154:1
 155:1 156:1 157:1 158:1 159:1
 160:1 161:1 162:1 163:1 164:1
 165:1 166:1 167:1 168:1,3
 169:1 170:1 171:1 172:1 173:1
 174:1 175:1 176:1 177:1 178:1
 179:1 180:1 181:1 182:1 183:1
 184:1 185:1 186:1,7,8,9,13,14
 187:1 188:1 189:1 190:1 191:1
 192:1 193:1,23 194:1,20,25
 195:1 196:1,11 197:1,25 198:1
 198:8,11,18 199:1,11 200:1,19
 200:23 201:1,7 202:1 203:1
 204:1 205:1 206:1,19 207:1
 208:1 209:1 210:1 211:1 212:1
 213:1,14 214:1
Scarfi's 203:8
Scarpacci 149:11
scenario 14:4 199:12
schedule 129:7 137:13 191:8,11
 191:22 192:3 201:22 202:7
school 53:8
script 14:8 17:11,15,15,17
 21:18 23:7,14,14 26:4 31:6
 33:12,19 34:6 35:20,23 36:15
 37:2,11 38:2,17 54:6,13 55:2
 55:23 58:9 70:23 71:18 72:7

72:14 75:17,19,20,22 76:3,3
 77:19 79:24 82:2,11,13,15,19
 82:24 87:19 90:13 93:14
 112:20 115:4,9,25,25 124:20
 124:23 135:9 136:10 140:9,16
 140:23 141:16 142:10,12
 146:10 159:17,21 160:7 163:11
 166:12,20,25 167:7 168:24
 173:2,2,6,9,13 174:14,18,22
 174:25 182:14 189:7 194:5,7
 194:21 196:25 197:23 202:12
 202:22,22 205:22,23 206:4,17
 206:18 210:6,11
scripts 115:8 135:25 140:18
 175:10
seats 6:4
second 33:21 122:16 148:25
 149:5,6 174:20 175:23 176:2
 202:12 208:9
sections 153:15
see 6:3 22:4 27:15 28:2 36:14
 38:20 47:21 48:5,13 55:11,17
 58:12 60:19 66:5 75:14 79:9
 79:11 95:12 109:2,12 110:3
 115:24 124:12,13 128:7 129:14
 139:12 143:23 166:4,6 188:18
 193:13 202:9 203:22 204:12
seeing 109:18
seek 69:25
seeking 70:6
seeks 60:13
seen 78:12,17,18,25 79:12
 149:25
sees 15:11 18:14
segregate 171:2 173:17
sell 66:15 93:22 117:8,8 173:9
 173:13
selling 124:23 140:10
sells 163:11 164:2
seminars 84:18
send 97:8 164:12
sending 192:5
senior 18:4
sense 38:22
sent 118:20 129:2
separate 7:8,15 25:23 26:16
 38:21 72:4 98:13,15 135:15,20
 136:5,6 153:18,19 155:2
 171:11 211:19,21

separately 42:21	signs 91:9
September 47:2 131:9 191:17	similar 43:15 48:23 49:16 66:18
series 149:13	127:16 159:7,8,10 172:12
serious 18:18	simple 113:24 189:15 209:8
served 188:19	210:10
service 59:12 67:14 84:21 87:13	simpler 20:23
90:8,16,18 104:7,12 113:3	simply 64:8 196:13 211:7
117:4 184:13 189:11	single 85:4 91:5,9 93:23 129:9
services 85:25 99:6 100:3 112:2	sir 7:23 84:2 89:8,14 143:14
142:20 155:20	sit 6:5 85:21 146:2 150:8
set 6:4 16:12 78:21 109:2 162:5	202:18
170:20 171:14 191:7 202:7	situation 155:9 161:19
sets 71:25 73:21	six 9:11 36:7 37:22,23 48:10,18
setting 154:7	49:24 50:5 81:2 91:16 97:5
settled 156:5 194:17	164:5 188:4 190:5 198:6
setup 171:11	199:17
seven 9:10,10 37:11 42:11,18	sixteen 199:16,17
43:3 47:12,25 48:11 188:4	sixty- 43:13
seventy 42:6	sixty-nine 36:16,19,23 37:18
seventy- 47:11	38:12
seventy-eight 47:17	sixty-six 35:5
seventy-five 199:6	sized 163:7
seventy-four 44:19 47:5 107:14	skewed 140:12
seventy-one 42:12,14,15,25	skip 132:7 134:10
seventy-seven 47:9 48:14	slip 181:5,7
seventy-six 45:11,19 46:11,17	small 147:14 187:12
shape 155:10	smaller 66:25 211:9
shareholder 84:16 100:7	smart 196:6
shareholders 211:20	sold 37:2 38:17 75:20 76:9
sharing 186:23	117:15 173:2,2,6
shipping 172:20	sole 140:8,10 151:9
shoes 75:21	solely 69:19 167:20 175:18
short 58:13	solid 65:23
shorter 60:8	solo 53:2
show 31:19 42:25 47:12 78:15	somebody 91:16 97:12 115:15
86:14 114:5 125:11 156:8	118:9 136:3 152:6,12 163:5
182:13 184:25 197:21 211:24	178:12 199:2
shows 42:10,15 45:11,19 47:7	someone's 27:25
74:24 79:8 182:18 197:4	somewhat 181:23 193:19
side 10:7,8 38:14 53:18	sorry 8:15 19:19 22:8 25:14
sides 190:25	33:21 34:8,14,19,20,22 36:6
sign 118:8 136:6 152:13,19,23	37:8,9 39:15,19 45:15 46:22
153:4 163:15 187:5	47:16 50:18 61:19 68:20 69:7
signatory 152:5,17	75:6 92:5 120:16 142:5 157:13
signed 28:20 152:21,24,25	158:5 168:6,6 175:3
signer 187:3	sort 66:18 82:2 91:12 161:5
significance 54:14	180:10 210:7
significant 65:21	sound 181:20
signing 153:6,11 200:19 201:7	sounded 189:20

source 40:3,5 210:23	104:20 105:17 107:22 151:17
sources 165:4 189:11 210:22	153:23 154:11 164:9 210:14
southern 60:10 87:4,7 112:16	states 179:16 181:17 194:21
114:17 117:22	stating 148:5 153:22 191:23
space 66:17 67:4	status 62:10
speak 72:12 80:11 84:19 105:16	statute 14:23
124:6	statutory 15:4
specific 5:14 25:9 65:9 122:3	stay 6:25
203:22 211:7	stayed 163:6
specifically 62:7 125:10 142:12	staying 51:25
speech 57:19	stays 8:14 77:14
spell 143:14	step 123:13
spelled 7:25	steps 151:20
spelling 8:10	Steve 169:9 172:8,18 194:15
spend 68:5 206:10	stick 116:5
spent 81:6 99:13 164:22	Stiletto 38:13 45:10,19 48:23
spit 67:10	49:16,23 125:10,13 126:18
spits 82:5 102:4	127:4,6 131:2,8 135:3 151:11
spoke 50:5 161:23	153:20,20 193:25 195:22 200:3
stack 152:13,21	202:2
staff's 114:8	stipulate 129:14
stage 66:24	stipulation 129:3,13
stamped 11:24 12:23	stipulations 128:17,18,23 129:2
stamps 146:14	129:3,9 212:7,11
stand 18:24 121:18 143:8 147:23	stop 86:7 88:25 120:19 172:20
standard 86:21 155:7	stopped 149:21
Standards 58:19 59:10 122:13	stops 162:18,25
163:22 167:19 183:8	store 66:8 164:22
stands 138:19 144:13 204:16	stores 155:3
stapled 41:17	story 112:24 114:15 145:9 148:6
staring 198:22	148:24
start 64:7 77:12 145:5 193:4	strange 149:16
started 6:2 149:5 157:6 161:11	streams 22:11,23 34:13 202:11
170:16	street 117:25 144:23 145:4,25
starting 12:18 49:5	147:21 155:17
state 1:2 6:13,13 10:19 13:19	strict 153:9
19:19 52:23,23 53:3,24 56:5,6	strictly 37:15
56:14 60:16,16 63:3 84:21,22	strip 13:25 14:2,9,13,15 21:15
86:21 87:18 112:25 118:7	21:25 22:2,9 23:21,23 24:4,5
145:3 146:7,21 148:4,24 149:8	24:24 25:4,21 26:24 27:6,9,13
149:14 155:23 156:10 157:10	27:18 28:2 29:24 33:15 36:25
160:22 167:15,16 170:13 171:4	194:6,9
175:17 178:2,11 179:25 183:14	stripper 23:8,10,11,15
188:22 192:11 209:13 214:2	strippers 28:2,3,4,5
stated 42:21 153:17 159:15	strong 57:21
214:5	structure 29:24 162:23 163:3,4
statement 3:3,3 13:21 15:17,18	163:8 195:19
99:3 114:2,6 122:16 170:11	structured 27:21
statements 4:18,20 29:6,17	stuff 90:20
30:22,24 31:2 100:18 104:18	

subject 10:6 13:25 17:12,15,20
 25:19 34:2,6 35:17 39:11,20
 41:5 54:6 56:11 58:6 59:15
 61:11 86:23 104:13 140:18,23
 168:24 194:11,18 203:14 204:9
 210:6
submit 10:9 11:10 16:4 130:11
submits 206:14
submitted 10:14 192:6 204:14
subpoena 184:25
subpoenaed 6:8,24 30:22 128:8
subscribed 214:10
subsequent 170:12
subtract 63:15,18
subtracted 42:23 48:7
suddenly 150:2
sued 197:11
sugar 120:21,24
suggested 162:12 180:2 189:25
 190:6
suggestion 181:3
suing 88:6
suit 167:10,12,13
suits 60:20
summarized 41:25
summary 5:9 11:5 55:5 62:23
 63:24 68:9 69:4,25 70:2,6
 193:5 204:14 206:23
summons 64:5
supervise 127:12
supervisor 19:24 20:5 133:9
supplier 119:7
support 10:2 203:24
suppose 78:8
supposed 142:2 180:8 181:8
 187:25 193:9
supposedly 203:3
supposes 140:20
Supreme 52:25 59:21 61:7,25
 63:21 118:20 195:6 196:3
sure 11:19 18:21 42:3 46:8
 53:17 54:19 69:9,11 70:20
 76:20 89:4 98:24 109:3 110:21
 113:16,18 116:16 125:4 128:24
 130:22 135:3 138:8 144:4
 167:24 186:3 191:6 193:19
 194:24 197:4 199:7,18 207:5
Sustain 142:24
sustained 62:5 80:5 177:13,16

swapped 97:4
swath 159:20
swear 19:3 52:9 84:3 143:9
 186:9
swipe 95:7
swipes 96:8
swiping 96:10
swore 186:10
Sworn 3:4,7,10 19:7 52:12 84:6
 143:12 186:14
system 135:16,17

T

T 4:2
table 92:4 94:2,2,3 181:12
 182:4
take 18:23 34:10 36:13 38:24
 41:14 86:4,13 93:15 95:4
 115:7 116:16,17 120:22 121:15
 121:18 127:23 131:23,24
 134:10 143:8 177:11 197:6
 208:24
taken 34:8 160:11
takes 77:18 182:5
talk 22:13 61:8 85:21 86:25
 87:2,2,4 104:24 105:5 142:2
 149:15 157:2
talked 198:23
talking 24:4 39:4 78:19 93:7
 112:15 140:14 150:25 176:20
 184:12 186:18 209:16
talks 199:4
tangible 75:20
tapes 38:5,6 39:22 42:17
tax 1:2,6,7,12,13 2:6 9:13,14
 11:24 12:24 13:25 14:11,12
 15:7 16:25 17:12,15,20 18:5
 19:23 20:24 25:19 28:24 29:9
 29:16 30:24 31:3 33:12,18
 34:3,7,20 35:8,11,17 38:10
 39:11,18,20 40:22 41:5 42:19
 42:20,21 43:16 46:6 48:22,23
 53:23,24 54:6 56:13,14,23
 58:6,9 59:8,13,15,17 60:6,12
 60:16,22 61:3,9,11,21 64:12
 70:5 74:4,4,9 84:23 86:15,18
 86:21,22,24 87:19,21 88:10,12
 88:20 91:12 100:17 113:14
 114:10,11,12 120:2 133:16
 140:19,23 144:24 145:3,6

146:21 147:5 148:10,12,14
 155:24 156:14 159:4 164:24
 165:22 167:15,16,21 168:24
 173:23 174:14,24 179:25
 188:15,17,19,25 192:6 194:11
 194:18 203:10,12,14 204:9,25
 205:9 206:18 207:2 209:13
 210:6
taxability 51:18 55:23 57:3
 146:12,14
taxable 14:3,13 22:4,7,7,16,20
 23:2,16 29:21 31:7 37:21 38:4
 42:10,22 43:8,9,9,10,11 44:25
 45:11,20 141:6,16 142:10,13
 142:16 145:23 146:9,16,16,18
 147:2,23 148:3,7,10,21 149:8
 149:25 150:2,20 156:4,11,22
 157:6,8 159:17,21 160:7
 169:18,25 170:23 174:21,25
 175:10 205:16,23 210:11
taxation 9:22 19:20 53:14,24
 54:12,25 56:5,6
taxed 31:4 147:15
taxes 14:4,19 61:17 151:24
 185:13 193:23 194:16 200:24
 200:24
taxing 178:4
taxpayer 15:5 16:24 23:25 42:20
 44:4 48:15 134:19
taxpayer's 134:19
taxpayers 203:19
taxpayers' 24:20 46:14
team 19:24
technology 85:24
teed 59:17
tell 19:4 31:23 33:16,16 36:14
 36:20 38:25 42:7 45:4 47:22
 48:25 52:9,18 78:16,16 79:12
 84:3,10,10 85:6,10 87:9 88:24
 88:24 99:7,8 101:22 104:2
 119:5,22 133:5 141:12 143:9
 148:11,18 150:24 171:15 180:7
 181:8 182:7 186:11 188:6
 201:14 202:18
telling 87:17 154:10 173:20
 180:15
tells 115:25 187:23 188:3
 189:21
ten 18:17 48:2 75:10 77:20,21
 86:3,13,15 88:8 90:2,9,12
 91:6,7,17,19,20 97:8 102:7
 113:25 117:3 162:16,17 174:6
 202:13,23
tenant 137:9
tenants 137:4,8 160:5,21 161:20
 179:15 184:15 210:18
tend 161:2,4
tenent 164:23
tens 116:13
tension 60:14
tenured 53:4
term 74:3,3
terminal 82:7 85:23 86:9 89:24
 93:8 97:3,3,10,11,12,18,21
 102:15 110:25 154:16,18 155:5
terminals 97:4 102:4 154:11,15
 154:25
test 42:16 189:15
testified 25:17 29:12,13 33:9
 36:8 50:7 124:20 125:7,8
 126:5,8,12 127:5,21 134:22
 147:18 153:13 154:13 161:9
 163:10 168:16 169:17 195:14
 198:19 199:11 201:14 205:4,11
 210:16
testifies 10:5
testify 8:13 55:11,15 64:11
 195:25
testifying 8:18,20 9:2 163:5
testimony 6:6 10:7 54:2,3 55:18
 55:18,19 56:16,17,21,22 62:6
 62:9,14 65:5 92:7,12 122:17
 126:10,20 130:16 177:12 198:9
 202:24 203:8,8 205:2,8 206:7
 211:17
thank 9:3 13:18 15:12 16:5
 18:19 19:8 33:7 50:23 51:4
 52:6,15 53:9 60:18 68:7,22
 69:16 70:10,14 79:18 81:13,15
 83:9,17 88:21 89:2 98:3
 100:25 101:19 103:15 105:15
 105:20 119:12 120:10,17
 121:14 122:11 125:2 130:19
 137:22,23 138:9 142:22 143:3
 143:17 157:12 167:22,24 175:5
 176:15 184:5,9 185:21,23,24
 186:2 190:15,19,23 192:18
 206:20,21 212:12,13 213:9,13
 213:15

thanks 70:20 79:17 184:6	three 5:12 32:10 37:7 47:18,18
That'd 144:6	47:25 76:16 77:24 98:18,20
that's 64:8	101:4,9 102:24 104:17 114:18
theirs 164:18	116:4 146:19 149:2 156:19
Thereabouts 76:19	164:5 166:15 171:10 172:9,10
they're 64:9	172:16,21 173:8 177:2,6 178:9
thin 153:14 160:25	207:21 211:16
thing 16:17 24:19 44:2,23 45:17	tickets 80:19
53:9 61:15 69:9 75:20 76:4	time 10:9,25 15:6 25:11 31:9
82:8 86:12 122:8 146:15	34:10 36:13 41:20 51:12 65:12
154:10 171:14 183:25 195:5	86:12 92:9 118:24 127:14
196:23 208:9	130:10 131:18 136:21,23 137:3
things 23:6 27:7 29:22 61:14,24	144:18 145:16,18 146:22 147:6
64:23 80:18,19 91:12 136:18	147:17,20 148:4 149:4 154:6
137:20 159:6 172:22 175:19	154:16,19,24,25 155:5,18
think 13:25 18:17 27:2,23 47:16	156:9 159:6 160:21 162:10,25
47:16 49:19 51:16,22 56:2	165:16 168:10,13 170:14
66:4 67:19 70:3 76:16 77:24	173:19 175:22 176:4 178:6
94:15 102:18 113:17,17 114:17	179:8 180:12 185:13,20 187:5
115:12 122:17 124:19 125:16	190:21 191:11,24 193:10,18
126:17 128:11 129:17 135:18	194:9 198:13,22 199:18 202:8
135:19 138:21,22 146:21	203:5 205:13 212:16 214:4
148:14 161:15 165:14 172:4	times 15:2 128:16 144:25 171:5
173:8 175:11 188:16 193:4	tip 77:11 95:10 104:8,8 109:23
194:5 196:6,17 199:17 210:12	109:25 110:5,10,12,15,20,22
thinks 56:22 61:2,3 64:14,15,15	111:2,4,7 115:6 163:3,20
third 17:8,9,14,19 112:18 144:6	165:10,11 166:9,10,11,24
159:12,15 160:12,15,17 172:11	167:21 180:3 181:5,7,9,12
175:22 209:12,19,25 210:4,9	183:13 187:21,23,24 188:11,18
212:25 213:5,5	188:19,21 189:8,15,22 190:10
thirteen 75:4	193:14 211:4,8,9
thirty 50:4 77:7,9,22 114:22	tipping 104:14
194:3 196:7	tips 139:5,6 159:16 163:9,16
thirty- 36:6	165:18,19 166:4,5,6,13,14,22
thirty-eight 35:4 37:11,14,19	166:22 180:4,5,6,25 181:25
72:19 73:2 74:25 75:5,6,7,15	182:10 183:9 188:8,15 197:14
76:10,11,14	197:17
thirty-five 76:21	title 58:13 139:14
Thomas 161:23	today 7:5,19 8:13 10:13,16
thou 39:7	52:19 54:10 55:20 56:7 58:7
thought 34:19 94:14 177:3	61:8 62:14 87:22 99:23 124:19
179:14 182:4 187:25	125:8 127:5 128:9 140:14
thousand 35:4 39:8 42:18 47:13	141:24 148:9 150:25 155:12
48:16,19 76:17 91:6,7,7 93:17	163:10 164:24 177:7 189:21
113:25 114:3,4,5 116:2,13	190:3 193:21 194:24 204:24
118:21 156:5,6 171:24 197:6	205:9 207:10 211:17,25
199:6,10,16,18 201:9 202:23	Today's 85:24
205:25	tokens 117:12,13
thousands 118:22,22,23 199:20	told 21:17 24:15 26:2 30:2,4,9
200:16	30:17 135:14,23 136:2,3 137:3

137:5,6,6,7 139:8,12,17 141:4
 148:9 149:10,24 174:4
tonight 162:16
Tony 143:5 144:11
top 38:11,12 74:13 98:20,21
 174:2
total 25:8 31:3 34:20 37:8,9,18
 37:18,21 47:25 104:10
totaled 36:2 37:5
totally 55:3 100:21,23 160:20
 195:3 211:19,21
totals 47:21,22
tour 30:3 135:11
track 90:25 91:2,3 93:3,5,10,11
 93:13,15 94:6,9,16 139:8,9
 180:18,24 181:9,25 197:8
 202:19 203:2
traditional 66:19
tragic 178:7
trail 197:4
transaction 73:11,19 75:23
 77:13 81:22 82:3 97:23 107:3
 146:9 164:6,7
transactions 21:18,21 22:5
 25:18 26:5 29:2,20 37:10
 38:21 46:13 61:9 74:21 79:24
 90:25 95:4 123:21 124:12
 146:15 164:9,25 204:8 205:16
transcribed 30:25 41:22 47:20
transcript 191:11,16
transcription 214:6
transfer 78:10 79:8
transferred 78:5
transformed 58:23
transmitter 164:20
transpired 26:13
treat 187:25
treated 150:22 161:14 187:25
 210:17
treating 180:13,14 185:11
 187:24
treatment 140:15 184:18
trial 147:12,21 169:16
tribulation 147:12
tribunal 112:10,19 128:19
 174:16,20 175:10,14 194:9,12
tried 128:15 148:21 149:22
triple 188:10
trips 99:12

trouble 188:5
true 17:11 61:20 76:7 90:9,11
 95:2,14 148:7 160:10 182:21
 198:22 214:7
truly 17:24
trust 152:12
trusted 152:10
trustee 113:16
truth 19:4,4,5 52:9,10,10 84:4
 84:4,4 143:10,10,10 186:11,11
 186:12 203:7 205:7
try 123:4 126:3 182:12
trying 25:4,6 35:24 47:24 48:3
 95:5 123:6 182:21 193:17
turn 36:16 109:5,11
twelve 20:3 91:6 114:3
twenty 32:11 47:4,13 75:8,17
 76:15 77:14,14,22 86:10,15,17
 89:25 93:23 104:5,7,10,11
 117:4 136:12 146:3 151:25
 161:12,21 162:12,13 181:11
 182:3 202:11 205:25 206:8
twenty-five 85:9 86:16 151:23
 156:6,13
twenty-one 109:6,9,17 199:6,10
twenty-seven 47:5
twenty-twenty 168:18
twenty-two 106:22 109:7,10,11
two 5:10 7:19 9:9,10 21:14,15
 27:20 28:18 29:22 30:13 31:10
 32:11 34:13 37:11 38:7,7 39:7
 39:7,8 40:11,11 43:12 50:3,6
 54:8 57:2,9,12 58:7 60:19,20
 65:18 71:25 76:4 89:9 91:6
 98:12,15,18,19 101:4,9 107:14
 114:4,5 121:4 122:24 123:7,8
 136:4,5,6 145:14 147:6 151:20
 155:2,3 159:9 161:24 162:19
 162:20 167:14,15 174:5,7
 186:7 189:9,11 193:11,11
 202:10 207:19 208:4,5 210:22
two-and-a-half 80:24
type 56:21 136:21 162:22
typewritten 214:6
typical 24:18
typically 20:9,20 27:5 80:24

U

U.S 52:25 84:21
Uh-huh 60:18 81:12 92:23 93:2

157:12 169:5 171:19 172:6
ultimately 155:19 156:2 171:6
 177:24 178:14 179:10
unable 40:5
uncertain 127:22
unclear 123:23
underling 149:21
underlying 160:24 164:7,19,21
 194:17
understand 25:12,15 51:17 58:5
 74:3 79:13,14 80:10,18 84:25
 87:5 110:19 111:10,12 113:24
 148:10 153:22 158:24 176:23
 196:6 212:6,7,20
understanding 65:23 99:16
 112:17 153:5 156:16,18
understood 99:15
unfair 114:18 183:20
unfortunately 112:14 161:21
 170:12
unilateral 15:5
unique 210:7
United 181:17
universally 162:2
University 53:5
unlawfully 88:8 188:10
unravel 126:4
unrealistic 152:11
unreasonable 126:16
upfront 202:12
upset 18:13
upstate 114:19
use 1:6,12 15:20 16:8,9 28:22
 29:7 30:23 40:5 82:19 83:2
 89:23 95:3 97:12,18 104:14
 116:22 126:11 157:6 159:24
 160:16,17 166:12,25 174:11
 198:14 206:2
useful 56:9
usually 20:12 22:10

V

V.I.P 168:17 170:22 171:11,12
 174:7 176:6
valid 70:7
value 62:2 112:18
Vanderlin 149:18,19,20
Vargas 171:21
Vargo 169:7 171:22,23 172:7,11
 173:14,25 176:7 194:14 200:18

200:18
varied 136:20
varies 20:12,22
variety 66:16
various 61:11 66:21 89:20
 116:17,22 125:9 144:25 145:2
 159:3
vary 80:18
Vassari 148:5
Vegas 84:17
veil 123:14,15
vendor 18:11 99:20 123:3
venues 161:9
versa 96:14 200:9
versus 58:10,14 87:4 209:13
vice 96:14
view 124:7,7
violation 148:15,17
violations 58:18
vis 200:9
visa 112:2
visit 134:24,24 135:6
visited 57:25 134:22 135:2
voir 205:6
volition 73:10
voluntarily 179:24 180:6 181:7
voucher 67:11 113:21 116:5,6
 206:8
vouchers 116:19

W

W-2 165:22 166:3
W-2s 165:21 166:4
wa 156:11
wa-- 156:11
wage 61:12 112:23 118:12 165:9
 189:12,14
wages 165:12 180:9 189:10
 196:15 197:14
wait 7:2,4 37:7 88:15 114:7
 157:17,17,18,18
waiter 182:5
waitress 95:10 96:11 102:5,17
 113:22 115:5 166:23 182:5
 183:11 187:19,20 211:8
waitress's 187:21
waitresses 95:25
walk 30:4 33:16 85:18,19 117:25
 118:5,14,24,25 182:10 205:24
walked 118:9

walks 96:7 145:25 146:3
wall 137:19
Walmart 66:5
Walton 99:12
want 7:18 16:3 17:2,22 22:4
 25:7 31:19 33:2 34:13 35:25
 68:10 69:8 71:22 72:11 76:3
 78:20 82:10,19 87:3 98:11
 101:3 102:6 104:24 117:11
 118:2 122:8 126:21 128:14,15
 143:22 148:16,23 150:7 151:18
 157:21 158:2 160:9 162:19
 165:13 170:21 173:22 184:24
 187:14,17 188:21 190:25
 206:10 207:3 212:20,23 213:7
wanted 15:19 26:12 33:5 70:8
 102:4 156:8 166:23 171:21
 172:21 178:20 185:3 190:8
 206:5,6
wants 30:6 54:13 77:11 85:15,17
 85:17 86:2 107:18 119:25
 136:4 162:17
wasn't 102:8,21 110:21 112:12
 126:9 130:7,9 154:5 165:24
 172:11,12 194:16 205:4,18
waste 156:9
water 182:10
way 11:12 24:23 27:21,24 33:23
 34:12 43:23 59:18 65:20 66:4
 67:23 71:23 72:10 86:6 88:18
 99:10 114:19 118:4 124:6
 127:16,25 128:22 138:4 140:13
 147:10 149:7 150:9,11 153:12
 154:14 155:10 159:5,8,10
 162:19 163:13 165:8 169:22,24
 172:13 184:21 187:25 193:3
 195:19 198:2 200:10 203:14
 204:20 205:7 211:2
ways 57:6 108:3 189:10
we'll 31:15 51:3,5 77:12 121:4
 121:4 132:3 133:3 191:4
we're 16:12 17:12 51:7,10 60:3
 61:8 79:2 87:22 88:22 99:22
 105:24 112:15,17 123:8 125:16
 132:6 177:16 196:13 197:3
 198:14 210:19,19
we've 67:20 184:12,22 209:16
 211:17
weave 203:5

week 91:10 113:25 116:12,13
weight 130:16
welcome 120:12
well-settled 14:2 15:3,10 16:7
 194:5
went 21:4,5 30:11 40:8 97:3,3
 97:18 99:14 100:4 134:21
 135:21 147:16,21 154:14
 158:21 166:17 182:8 183:2
 197:9
weren't 29:7 40:10 64:3 157:11
 168:19 179:7,7 180:12,14
West 144:18 145:4,9,12,12,15
 147:20 155:16
whatsoever 24:9 198:19 200:15
 202:4 206:15
WHEREOF 214:9
whichever 72:3 165:20
whoever's 164:14
win 114:24 189:19
wind 147:4
wise 77:23
wish 11:11 62:12 67:7
withdraw 67:23 93:17 116:13,15
 139:18 152:24
withdrawal 67:16
withdrawals 67:24
withdraws 92:16
withheld 88:8 188:11
withhold 90:10,11,15
withholding 138:24 185:12
witness 6:12,14 10:5 15:20
 18:20,22,23 19:7 31:20 33:5
 50:22 51:19,23 52:2,5,12
 53:17,18,20 54:15 55:7,9,13
 55:24,25 56:4,13 61:4,22 62:7
 63:14,18 64:11,18,22 65:12,13
 69:8,12,14,16 81:20,24 82:4
 82:12,21,25 83:4,11,14,17,22
 83:25 84:6 92:2,5,10,13 94:3
 95:18,21 98:22 101:11,14
 103:18,23 105:5,14,16,20
 106:3 108:25 119:13 120:12,16
 120:18,23 121:13,21 126:5,12
 128:8,11 129:16 130:4 141:7
 142:25 143:4,12,16,18,22
 144:5,8 169:9 170:5,7,8
 185:14,19,22 186:2,5,14
 190:16 205:10 214:9

witnesses 6:5,16,25 9:25 10:3,4
17:13,23 124:18 190:17 195:10
WOLLEBEN 214:3,13
women 27:15
word 100:3 124:18 129:9 170:5,9
190:3
words 188:13
work 24:16 32:12 36:9,12,13
42:2,3,4 43:20 48:3 77:8 85:2
118:2,10,11,12,13,14 119:4,5
128:16 129:2 137:11,12 149:21
154:8 159:3 160:24 161:25
171:24 196:14 201:22 202:8
209:18 212:8,11
worked 19:25 37:2 138:16 172:3
186:20,25
worker 113:3 189:12
workers' 185:17
working 57:21 58:22 65:23 72:3
123:8 124:14 172:8 196:14
workman's 188:25
workplace 162:11
works 29:19 66:13 116:7
world 117:19 155:8
would've 148:21
wouldn't 64:3 71:2 97:2 104:9
157:2 170:19 173:25 187:3
206:9
write 102:5
writing 149:15,16 157:3,10
191:23
written 122:8
wrong 18:9 112:17 120:2 122:4
141:2 163:24 188:8
wrote 102:9 138:20 169:24

X

X 3:2 4:2,2

Y

yeah 45:16 55:13 69:7 76:5,18
82:16 89:19 92:2 94:25 96:24
97:20,22 98:24 99:6 100:6
103:15,23 105:14 106:7 109:10
109:14 110:22 111:15,18,22
113:19 116:19,24 118:22
120:23 121:9 134:9 135:8
138:12 144:8 159:4 161:24
170:5 171:17 176:9,12 177:9
188:9 198:13 207:13 208:22

year 84:17 149:22 150:3 157:8
161:24 164:2,3 209:12
years 20:3 28:18 57:20 80:13
85:9 99:12,14 114:22 115:14
115:14,14 151:23,25 152:11
156:7,20 159:3,4 161:12,22
171:24 175:24 184:14 188:5
York 1:2 2:5,5,9 6:13,13 19:19
30:16 37:3 53:13,14 58:19
59:11 84:21,22 86:21 87:5,8
94:22 102:24 118:7 119:8
122:13 145:3 146:21 148:4
167:14,16 178:2,11 209:13
214:2

Z

Z 107:25,25 108:3
zero 35:7 42:11 116:5,5 182:17
182:18

0**1**

1 1:7,13 214:5,7
1-7-11 5:11
10 208:2
102 3:12 5:10,12
105 3:12
106 4:16
107 4:18
1099 120:8
10th 12:15 13:13 207:24 208:25
11/30/13 42:17 44:5
11:31 51:8
11:39 51:8
110 4:19
111 4:21
112 4:22,24
12 4:5,6,8
12:24 83:20,20
12223 2:9
124 3:13
126 3:5
13 4:10,11,13 46:24 131:10
130 3:6 5:2
138 5:3
14 3:3 131:10
143 3:6
149 5:13
15 1:16

15:24 191:9 15:25 191:9 15:57 213:16 150 3:15 15th 191:19 209:2 16 3:3 117:21 175 3:16 180 4:20 184 3:16 186 3:17 18th 193:7,9 207:21 19 3:5 117:21 192 3:18 193 3:18 194 3:13 1999 53:8 1st 9:14,15 131:10 <hr/> <div style="text-align: center;">2</div> <hr/> 20 129:6 2000 12:23 110:2,3 2004 98:21 2008 9:14,15 2010 110:3 2011 18:15 98:20 2013 47:2 2014 1:7,13 9:15,16 117:20,20 2015 157:8 2016 157:9 2018 11:25 12:4,7,24 13:4,7 209:11,11 2019 1:16 12:15 13:13 191:17,19 191:21 209:2 214:10 203 3:19 20th 145:4,9,12,13,15 147:20 155:17 193:8 207:21 208:5,6,8 208:13 212:9 213 214:7 217 5:5,6 218 3:20 22 4:21 24th 158:7 25th 207:22 208:3,5,9,19 26th 214:10 28 1:6,7,12,13 9:13 286 5:4 28th 9:15,16 131:10 144:22 29 1:6,12 9:13 <hr/> <div style="text-align: center;">3</div> <hr/>	30th 98:21 32 4:14 <hr/> <div style="text-align: center;">4</div> <hr/> 44 127:17 44th 38:13 39:12 43:15,17,23 44:7,10,20 45:2,8 49:23 57:11 57:22 58:10,14,16,17,23,25 59:3,7 60:5 66:14 67:5,13 71:15,20 72:3,6 81:10 100:8 125:10 135:2,11,12 138:22,25 144:17 145:13 151:2,8 153:20 153:20 154:4 155:18,21 156:7 165:20 166:4 179:2 193:24 195:22 196:21 200:19 201:25 <hr/> <div style="text-align: center;">5</div> <hr/> 54 3:8 5th 191:21 <hr/> <div style="text-align: center;">6</div> <hr/> 666 2:5 677 117:7 689 110:8 <hr/> <div style="text-align: center;">7</div> <hr/> 7-15-19 1:1 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1
---	--

137:1 138:1 139:1 140:1 141:1
142:1 143:1 144:1 145:1 146:1
147:1 148:1 149:1 150:1 151:1
152:1 153:1 154:1 155:1 156:1
157:1 158:1 159:1 160:1 161:1
162:1 163:1 164:1 165:1 166:1
167:1 168:1 169:1 170:1 171:1
172:1 173:1 174:1 175:1 176:1
177:1 178:1 179:1 180:1 181:1
182:1 183:1 184:1 185:1 186:1
187:1 188:1 189:1 190:1 191:1
192:1 193:1 194:1 195:1 196:1
197:1 198:1 199:1 200:1 201:1
202:1 203:1 204:1 205:1 206:1
207:1 208:1 209:1 210:1 211:1
212:1 213:1 214:1

7-30-04 5:12

71 5:8

73 3:8

7th 98:20

8

83 3:9

87 3:11

8th 11:25 12:4, 7, 23, 24 13:4, 7
110:8

9

92 3:11

94 4:18

9th 191:17